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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~167~~ 26

THE DAYTON COAL AND IRON COMPANY (LIMITED), PLAINTIFF IN ERROR,

vs.

T. A. BARTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED JANUARY 15, 1900.

(17,611.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 6, 1900.

1 STATE OF TENNESSEE,
Rhea County.

Be it remembered that at a circuit court began and held for the county of Rhea, at the court-house, in the city of Dayton, in said county, on the second Monday in August, 1899—present and presiding, the Honorable M. D. Smallman, judge, &c., of the sixth judicial circuit—the following proceedings were had and entered of record, to wit:

T. A. BARTON
vs.
DAYTON COAL & IRON COMPANY (LIMITED).

Magistrate's Warrant.

STATE OF TENNESSEE,
Rhea County.

To any lawful officer within said county:

You are hereby commanded to summon Dayton Coal and Iron Co., Limited, to personally appear before me or some other acting justice of the peace for said county, to answer the complaint of T. A. Barton in a plea of debt, due by order of punchout drawn or issued by said D. C. & I. Co., Limit., of which orders of punchout the said T. A. Barton is the *bona fide* holder under $500.00.

Given under my hand and seal this 25th day of May, 1899.

W. L. LILLARD, [SEAL.]
Justice of the Peace.

Endorsed: No. —. Magistrate's warrant. T. A. Barton, plaintiff, *vs.* Dayton Coal & Iron Co., Limited, defendant. Issued 25th day of May, 1899. W. L. Lillard, justice of the peace.

Came to hand 25th day of May, 1899. Executed and set for hearing on the 26th day of May, 1899, before W. L. Lillard, justice
2 of the peace, at 1 o'clock p. m. W. M. Brown, sheriff.

Bill of cost: issuing warrant, 25; serving warrant, 50; judgment, 75; docketing 15; bond, appeal, 50; certifying costs, 25.

I hereby certify that the above bill of costs is correct. W. L. Lillard, justice of the peace.

Evidence of Debt.

List of orders or punchout drawn or issued by the D. C. & I. Co., Limited, which have been sold, assigned, and transferred to T. A. Barton.

Mel Sharp,	Apr.	20,	1899.....	$1.00
H. Melton,	"	20,	"	1.00
Tom Hutcheson,	"	12,	"	2.00
Geo. Holston,	"	15,	"	2.00
Lige Newton,	"	6,	"	2.00
Geo. Gains,	"	8,	"	2.00
Horace Cates,	"	22,	"	2.00
Lem Whitaker,	"	22,	"	2.00
David Day,	"	20,	"	2.00
J. S. Dixon,	"	10,	"	2.00
Chas. Mayfield,	"	15,	"	2.00
Tom Cleage,	"	21,	"	2.00
Joe Lively,	"	15,	"	4.00
Henry Mayfield,	"	13,	"	4.00
Melvin Hite,	"	17,	"	4.00
Geo. Goins,	"	21,	"	5.00
Wm. Eskridge,	"	13,	"	1.00
C. Wilkinson,	"	8,	"	1.00
Geo. Holston,	"	15,	"	1.00
Tom Hutcheson,	"	17,	"	1.00
Lon Smith,	"	7,	"	1.00
Horace Peak,	"	8,	"	1.00
Hope Rogers,	"	19,	"	1.00
Doc Erwin,	"	4,	"	1.00
John Dixon,	"	4,	"	1.00
3 Elbert Brown,	Apr.	6,	1899,...	1.00
Jesse Randolph,	"	12,	"	1.00
				$50.00

Protest.

UNITED STATES OF AMERICA.

STATE OF TENNESSEE, }
Rhea County. }

Be it known that on this the 25th day of May, in the year of our Lord one thousand eight hundred and ninety-nine, at the request of T. A. Barton, I, N. M. Hensley, notary public, duly commissioned and sworn, residing in the city of Dayton, county and State aforesaid, did present the original orders, scrip, or punchout hereto annexed to the drawer or maker thereof and demanded the payment thereof, which was refused. Whereupon I, the said notary, at the request aforesaid, did protes- and do hereby solemnly protest against the drawers and makers of said orders, scrip, or punchout, and each and all of said orders, scrip, or punchout, for all damages, cost, and

interest incurred or to be incurred for want of payment of the same; and I, the said notary, do hereby certify that I have thus done and protested, in the city of Dayton, county and State aforesaid, and my notarial seal affixed the day and year above written.

N. M. HENSLEY,
Notary Public.

[25c. U. S. R. stamp.]

Justice's Judgment.

T. A. BARTON
vs.
DAYTON COAL & IRON CO., LIMITED.

In this cause I give judgment for the plaintiff, T. A. Barton, against the defendant, Dayton Coal & Iron Co., Limited, for fifty dollars and costs of suit, for which execution may issue.

This the 26th day of May, 1899.

W. L. LILLARD, [SEAL.]
Justice of the Peace.

4

Appeal Bond.

T. A. BARTON
vs.
DAYTON COAL & IRON CO., LMTD.
Before W. L. Lillard, J. P. for Rhea County, Tennessee.

We, The Dayton Coal & Iron Co., as principal, and W. B. Miller, as surety, acknowledge ourselves indebted to the plaintiff in the above-styled cause in the sum of $250.00. This obligation is to be void on condition that the defendant in above cause shall prosecute with effect and appeal by it prayed and obtained to the circuit court at Dayton, Tennessee, from a judgment rendered in above cause against it on March 26, 1899, or in default thereof that said defendant shall abide by and perform the judgment of said circuit court in the premises; otherwise this obligation to remain in full force and effect.

Witness this 27th day of May, 1899.

THE DAYTON COAL & IRON CO.,
LIMITED,
By W. B. MILLER, *Attorney.*
W. B. MILLER, *Security.*

Filed and approved this 5, 27, 1899.
W. L. LILLARD.

Court Minutes.

Minutes August Term.

T. A. BARTON
vs.
DAYTON COAL & IRON CO., LMTD.

19TH DAY OF AUGUST, 1899.

This cause coming on to be heard on this the 19th day of August, 1899, before the Honorable M. D. Smallman, judge, &c., without the intervention of a jury, upon the evidence, and upon the evidence the court finds the issues in favor of the plaintiff, and that the defendant is indebted to him in the sum of fifty dollars, with interest thereon from the 26th day of May, 1899, it is therefore considered and adjudged by the court that the plaintiff recover of the defendant the sum of fifty dollars, principal, and the further sum of 75 cents, interest, and all the costs of this suit, including all proper protest fees, for all of which execution may issue.

Minutes August Term.

T. A. BARTON
vs.
DAYTON COAL & IRON CO., LIMITED. } No. 1096.

19TH DAY OF AUGUST, 1899.

In this cause the defendant moves the court to set aside the judgment heretofore entered against it at the present term and grant him a new trial; which motion, after being agreed to and fully understood by the court, was overruled by the court; to which action defendant excepted and prayed an appeal in the nature of a writ of error to the next term of the supreme court, at Knoxville, Tennessee; and thereupon came into open court the defendant, and with it, as security, W. B. Miller, each of whom acknowledged themselves indebted to plaintiff, T. A. Barton, in the sum of two hundred and fifty dollars, but to be void in case defendant prosecutes with effect its appeal in the nature of a writ of error aforesaid, or in default thereof abides by and performs the judgment of said supreme court in the premises, and said bond being good and solvent, the security offered is accepted and the appeal is granted, the defendant having tendered to the court its bill of exceptions, which was signed and sealed by the court and ordered to be made a part of the record.

Bill of Exceptions.

T. A. BARTON
vs.
DAYTON COAL & IRON CO., LMTD.

Bill of Exceptions in the Circuit Court at Dayton, Tennessee.

On the trial of this cause the following testimony was introduced:

6 T. A. BARTON, being duly sworn for plaintiff, deposed as follows:

1 Q. Is your name T. A. Barton?
A. Yes, sir.
2 Q. Are you the plaintiff in this action?
A. Yes, sir.
3 Q. I wish you would examine this punchout shown to you and state to the court whether or not you are the *bona fide* holder of that punchout.
A. I examined it before the squire got it. It will take some time to look over it; each piece is separate.
4 Q. What is your business?
A. I am a merchant.
5 Q. I will get you to state whether or not you bought and paid for that punchout.
A. I traded goods for it.
6 Q. You exchanged merchandise for it, did you?
A. Yes, sir.
7 Q. State whether or not you sold your merchandise for the punchout or scrip in the same way that you would for money.
A. Just the same; took it dollar for dollar.
8 Q. I will get you to state whether or not you ever presented that scrip to the Dayton Coal & Iron Company for redemption in money.
A. I did.
9 Q. State when that was.
A. The first I presented was in June, 1898, but this I presented May 22nd last, I believe it was.
10 Q. I will get you to state whether you presented it at a regularly established pay-day of the Dayton Coal & Iron Co.
A. I did, to the cashier, and he told me that Mr. Ault would pay me.
11 Q. What did you understand when he said Mr. Ault would pay you?
A. That he wanted me to take it in goods; trade it out.
12 Q. Who was the cashier of the Dayton Coal & Iron Co.?
7 A. G. C. McKenzie.
13 Q. You presented it to him and demanded payment in cash, did you?
A. Yes, sir.
14 Q. He refused to pay you, did he?
A. He did.

15 Q. Then what did you do?
A. I proceeded to see if I could collect it.
16 Q. State whether or not you made further demand through the notary public who protested the claim.
A. I did.
17 Q. And then you brought this suit?
A. I did.
18 Q. What is the purchasing power of this punchout or scrip, do you know?
A. Dollar for dollar.
19 Q. Do you mean that you can buy as much for a dollar in punchout as you can for a dollar in cash?
A. They accept in payment for goods the same as cash.
20 Q. In other words, it's worth its face in goods at the company store?
A. Yes, sir.
21 Q. How long had you held this punchout before you presented it to the cashier of the Dayton Coal & Iron Company for redemption?
A. About thirty days.
22 Q. What is the aggregate amount of it?
A. $50.00 (fifty dollars).
23 Q. And you presented it on a regular pay-day of the company?
A. Yes, sir.

Cross-examination:

1 Q. Mr. Barton, you are in the mercantile business at Dayton and have been for several months?
A. Yes, sir.
2 Q. The Dayton Coal & Iron Co., Limited, that issued the
8 orders is in the mercantile business and has been for several months?
A. Yes, sir.
3 Q. It has a store that is in Dayton or in the outskirts of Dayton and sells the same lines of goods that you sell, don't it?
A. Well, they run a department store and I run a general clothing store.
4 Q. They carry the same lines that you carry and other lines besides?
A. Yes, sir.
5 Q. The Dayton Coal & Iron Co. is a competitor of yours and has been since you went into business, hasn't it?
A. Well, I don't know. I make it pretty hot for them sometimes.
6 Q. Then you are competing in the same lines?
A. Yes, sir.
7 Q. Did you at any time try to get the Dayton Coal & Iron Co. indicted because they were issuing these store orders?

Objected to by complainant's attorney because incompetent, irrele-

rant and has nothing to do with the lawsuit. Objection sustained, and defendant excepts.

8 Q. Now, I will ask you, Mr. Barton, if it is true that the cashier of the defendant, Mr. McKenzie, told you in substance that the Dayton Coal & Iron Company, through its storekeeper, Mr. Ault, who was in charge of its store, would redeem each and every of these orders in merchandise at face value if presented.

A. No, sir; not each and every one. I presented just the package and he referred me to Mr. Ault; said Mr. Ault would pay me, and I had been to Mr. Ault once before and took some different orders and he would not accept them for goods from me, and I didn't want to go no more.

9 Q. Why didn't you go to Mr. Ault at this particular time?

A. I went to him once before and he wouldn't give me goods for them, and I didn't feel like going back.

10 Q. Do you mean that you thought Mr. Ault wouldn't pay you goods for them?

A. I don't know whether he would or not.

11 Q. Isn't it a fact that you demanded cash and nothing but cash for that punchout or orders sued on?

A. That's what I demanded.

12 Q. And you wouldn't take goods for them, would you?

A. No, sir; not on the day they were presented.

13 Q. These orders were addressed to the storekeeper, and each and all of them had on them this: "The storekeeper will supply goods to the amount of this order to (then naming the bearer), in account with the Dayton Coal & Iron Co., Limited. G. C. McKenzie, cashier."

A. Yes, sir.

14 Q. And you took these orders knowing that they called for merchandise, did you?

A. No, sir; that wasn't in my mind when I took them.

15 Q. This that I have read was printed on the face of the orders?

A. I took them backing my judgment for what I could get out of them.

16 Q. You had some idea that the Dayton Coal & Iron Co. wouldn't pay you cash on them, didn't you, without suit?

A. No, sir; I didn't know whether they would or not; I had to try it.

17 Q. And you took these orders knowing that that printed statement was on the face of them?

A. Yes, sir.

18 Q. And on the other side of each of these orders there is this language printed: "This order is not transferrable and can be used only by the party in whose name it is made." Now, you knew that that printed stipulation was on the back of each of these orders, didn't you?

A. Yes, sir.

19 Q. And with that knowledge you say that you traded mer-

chandise for each of these orders on the Dayton Coal and Iron Co.'s store, and then took the orders and demanded cash on them?

A. Yes, sir.

20 Q. How close is the store of the Dayton Coal & Iron Co. to the office of the cashier, where you went and demanded the cash? Is it in the same building, under the same roof?

A. It is near the same building; you might say under the same roof.

21 Q. And you didn't go into the store to get merchandise at all?

A. No, sir.

22 Q. Mr. Barton, if the defendant had offered you the merchandise for these orders at the time you took them over there would you have accepted it and surrendered your orders?

A. Not on that day.

23 Q. Well, would you have done so at any time and will you do so now?

A. I won't make any promises.

24 Q. Well, will you do so now?

A. I will not.

25 Q. Did you know of any one else realizing cash on this kind of an order when you took these from the Dayton Coal & Iron Co.?

A. No, sir.

26 Q. You took these orders from just anybody that presented them and wanted merchandise from your store?

A. No, sir; I took them only from the laboring men, the men that worked and earned it.

27 Q. Did you know each and every of the parties whose names appear on these various orders personally?

A. No, sir; there is some that I did not. When I taken that *that* I just took them from the laboring class. I didn't take them from the business men nor from the saloon men nor from anybody except the laboring men.

28 Q. Do you undertake to say that you took these orders from the people who worked for them only?

A. I can't be positive.

29 Q. And they may have changed hands a dozen times before they reached you?

A. They may have, but they looked mighty nice and bright when I got them.

30 Q. You say that you have some that you took from the saloon men?

A. No, sir; I don't take them from any business men at all.

31 Q. You make them endorse them now when you buy them?

A. Yes, sir.

32 Q. And you don't take them now, I believe, from anybody except the party to whom they are originally issued?

A. No, sir.

33 Q. But this batch you took promiscuously; that's correct, is it?

A. Yes, sir; I took them promiscuously.

34 Q. You sold your goods, of course—your merchandise that ou gave for these orders—at a profit, Mr. Barton?
A. Well, yes. It takes a little profit along to keep a fellow.
35 Q. You sold these goods for profit?
A. Yes, sir; I sold the goods for a profit.

Redirect examination:

1 Q. You say that you had presented this punchout at the com- any's store, and they had refused to redeem it even in merchandise?
A. No; not this, but some other that I had.
2 Q. They refused to redeem it even in merchandise?
A. Yes, sir.
3 Q. Isn't it a fact generally that the defendant company refuse o take it except from the parties to whom it was issued?
A. No, sir. They take it from anybody now, I suppose. I don't ear any complaint. I will say that they take it from anybody, as ar as I know. I haven't heard any one say that they refused it.
4 Q. What do you know about it; have you ever presented any here in person for redemption?
A. I have.
5 Q. You are not a laborer or employee of the defendant com- any?
A. No, sir.
6 Q. None of this scrip or punchout has ever been made payable o you. Have you ever traded any of it at the company's store?
A. Yes; some of it.
7 Q. Did they at any time make any objections to paying it be- cause it wasn't drawn in your favor?
12 A. I just presented it to Mr. Ault and called for so much goods, and when I went to count out the punchout he refused to accept it, and I told him I didn't know why when they were taken from other people.
8 Q. Who is Mr. Ault?
A. W. A. Ault, the manager of the company's store.
9 Q. Did he give you any reason for declining to take it?
A. No, sir; it took only about three words to settle it.
10 Q. Did you ever present it there for the payment for goods more than once?
A. No, sir; I was never refused but once.

Recross-examination:

1 Q. Mr. Barton, you understood when Mr. McKenzie referred you to Mr. Ault that he meant for you to go there to the store, and that Mr. Ault would supply you with the goods according to the calls of these orders, didn't you?
A. That was what I thought he meant.
2 Q. And you didn't want the goods and did want the cash, and hence wouldn't go?
A. I would rather have had the cash than the goods.
3 Q. I wanted to know if you refused to go to Mr. Ault on this

occasion because he hadn't supplied the goods before or because you didn't want the goods. I am talking about the time McKenzie talked to you.

A. I didn't go back any more to the store.

4 Q. I want to know if you didn't go with these orders and demand goods because you had been refused once before, or was it because you didn't want goods and wanted the cash?

A. I wanted the cash.

5 Q. How long was that before when you say Mr. Ault hadn't supplied your demands with goods?

A. I don't remember the date.

6 Q. It has been as much as a year ago or more, has it?

A. No; I don't think it has been that long.

13 7 Q. It was some time in 1898, wasn't it?

A. No, sir.

8 Q. About when was it?

A. I don't remember the date. I could give it if it was necessary. I have it at the store.

9 Q. You say you are sure it was not in last year?

A. No; I won't be sure. It was in October, 1898.

10 Q. Was the defendant taking orders from other people at that time?

A. Yes, sir.

11 Q. Are you positive about that?

A. Yes, sir.

12 Q. Not taking them from people, generally?

A. They took them from parties that they didn't belong to.

13 Q. At the time you were refused?

A. Yes, sir.

14 Q. Who did they accept any from at the time you were refused?

A. I will bring up the men at the proper time.

15 Q. Now is the time. Who was it?

A. I can't call their names right now.

16 Q. Then you can't tell who it was that they were taking orders from?

A. I don't know whether I could bring the parties here or not.

17 Q. Didn't you at one time, with some other merchants here, request the Dayton Coal & Iron Company to not take orders promiscuously?

A. I did, in words to that effect. There was an agreement between some of the merchants and the Dayton Coal & Iron Co. that they would take those orders only from the parties that they were issued to; make them non-transferable, just like they read on the back.

Question and ans. objected to by plaintiff. Objection sustained, and defendant excepted.

18 Q. Mr. Barton, didn't you present those orders that you talk about having been refused merchandise on after you had the agreement that you speak of with the Dayton Coal & Iron Co.?

A. Yes, sir; I believe that is right.

14 19 Q. And you never did demand any merchandise on these orders you are suing on now?

A. No, sir.

20 Q. Never demanded anything on them but cash?

A. No, sir.

The plaintiff here read the store orders aforesaid, amounting in the aggregate to $50.00 and each of which was a substantial copy of the following, except as to name and amount:

Copy of One of Orders.

Face.

(25) (25) (25) (25) (10) (10) (10) (10)

Good for all amounts unpunched. (10)

Apr., 1899.
$2.
No. L. C. 15.
Not transferable.

The storekeeper will supply goods to the amount of this order to Geo. Holston, in acc't Dayton Coal & Iron Co., Limited. (10)

G. C. McKENZIE, *Cashier.*

(5) (5) (5) (5) (5) (5) (5) (5)

Back.

(5) (5) (5) (5) (5) (5) (5) (5) (5)

This order is not transferable, and can be used only by the party in whose favor it is made. (10)

(10)

(25) (25) (25) (25) (10) (10) (10) (10)

The defendant agreed there were fifty dollars in the aggregate of such orders, and this agreement is to be used in lieu of copying all of said orders in the record.

The plaintiff here closed his proof and the defendant introduced the following testimony.

G. C. McKENZIE, being duly sworn, deposed as follows:

1 Q. Mr. McKenzie, are you cashier for the defendant, The Dayton Coal & Iron Company, Limited?

A. Yes, sir.

2 Q. I will get you to state how long you have been connected with the company.

A. I have been connected with them continuously since '93. I had been connected with them at intervals before that.

15 3 Q. Has your place of employment been in the office where these store orders that you are sued on are issued and given to the original holder?

A. Yes, sir; exclusively.

4 Q. I will get you to state whether you are familiar with the system adopted by the defendant in the matter of issuing and redeeming or discharging these orders.

A. Yes, sir; I am familiar with all the details.

5 Q. Tell what kind of business the defendant is engaged in and has been for some years.

A. In the manufacture of pig iron, mining coal, making coke, &c.

6 Q. I understand that it mines coal and makes coke, and with that coke and other coke that is bought makes iron from iron ore that they buy and ship in here to Dayton.

A. Yes, sir.

7 Q. In connection with the operation of the furnaces at Dayton, do they issue these store orders to their employees in payment of wages?

A. Yes, sir; they issue those as an advance on their wages.

8 Q. You explain to the court how often pay-days come with the company and how these store orders are utilized during the meantime.

A. The pay-days come every thirty days. We have pay-day now about the 20th of the month, and the men are paid off to the end of the preceding month, and during the preceding month the time is turned in daily, and if they wish an advance on their time it is given to them. A number of them take up quite a little of their earnings in store orders. Some don't take up any at all. It is a question that is voluntary on the part of the men. It's issued to them as they call for it.

9 Q. There is no requirement of the company, practice, rule, or anything of the sort, that forces them to take any portion of their wages in store orders?

A. There is not.

10 Q. They can wait until the end of the month and get

16 cash if they desire it?

A. Yes; and a number of them do.

11 Q. I believe that you say that these orders are issued by the defendant against the time of the operatives and during the month before they receive their pay.

A. Yes, sir.

12 Q. And you say that a debt is made against the account of the man to whom these orders are issued when they are issued to him?

A. Yes, sir; a debit to his account of the amount issued.

13 Q. He is charged up with it as tho' it had been a direct liquidation of that much of their indebtedness to him?

A. Yes, sir.

14 Q. I will get you to state if you have looked over this bunch of orders that is sued on.

A. Yes, sir.

15 Q. State whether you are acquainted with many of the operatives that are the payees of these orders.

A. Yes, sir; with many of them, but not quite all.

16 Q. I will get you to state whether or not the various payees of those orders were familiar with the rules and customs and requirements of the defendant at the time these advances were made.

A. They undoubtedly were.

17 Q. State whether or not the defendant company stood all the time ready and willing to supply merchandise on these orders according to the stipulation on the face of the orders.

A. They have always been ready and willing to furnish the goods.

18 Q. When Mr. Barton, the plaintiff, came over and demanded cash on these orders he says that you referred him to Mr. Ault, the storekeeper. Now, why did you do that, if you did so?

A. I referred him to Mr. Ault that he might get the goods on the orders according to the custom of the company.

19 Q. Mr. Barton says at some time that he presented some orders there and they didn't supply the goods on them. Just state what you know about that.

A. Well, there was an attorney came over and stated that he represented the merchants of Dayton, and they made a
17 request. I better state, however, that it may not be in order for me to tell this, because I did not hear the conversation; was only informed of it afterwards.

20 Q. Well, I ask you if you know why it is that the Dayton Coal & Iron Co. takes these orders from people other than those to whom they are originally issued, if they do so.

A. They do take them at the present time from other people. There was quite a demand from some of the merchants for them not to take them a while, and they stopped taking them, but the demand from other citizens was much more numerous for them to take them, so the management decided to take them from whoever presented them.

21 Q. As I understand, then, the merchants of Dayton made some question about the Dayton Coal & Iron Co. receiving these from the public generally, and for a while it declined to redeem them from anybody except the original holder?

A. That was the reason.

22 Q. Why was it that they commenced to accept these orders from whoever presented them rather than the original holder?

A. The demand came from the citizens generally and also from employees. They stated that they could buy wood, vegetables from wagons and a great many things of that kind when they would be redeemed in the store, but when the store wouldn't take them from other people they were deprived of this and had no money to buy such things as that with.

23 Q. Now, you say that you have been there in the office several

years and are familiar with the practices of the defendant. I will get you to state whether or not it is practicable to operate a manufacturing enterprise of that kind with the number of men that's required to operate it without having a system of payment from one pay-day to the next during the interim.

A. It is not practicable for the reason that a great number of the men are poorly supplied with the necessaries of life, and it is an absolute necessity that they have provisions to go upon during the month. We have had a number of men come in from Athens, Cog Hill, and other points, who were not able to buy a pair of
18 hand leathers to carry pig iron until they were supplied with the means of purchasing them. Also, they were unable to procure a place to lodge during the night without some means of settling the bill. I will state that there is a Mrs. Jones whom we requested to keep them, and she came to the office and stated that she had been beaten so many times by men not paying the board that she wouldn't agree to take them unless we advanced it, and men have arrived here in the afternoon and we would give them punchout before they did any work at all.

The plaintiff, by attorney, excepts to the foregoing question and answer, because it is made up largely of the opinion of the witness, of hearsay evidence, is in the nature of expert testimony, the witness not having qualified as an expert, and irrelevant and incompetent. Exception sustained by the court; to which defendant excepted.

24 Q. Mr. McKenzie, you may state whether or not you are in charge of the office as cashier, from which these orders are issued, and have the issuance under your control.

A. I am.

25 Q. Would these orders have been issued, or would you have permitted them to be issued, had you not intended them to — redeemable in merchandise as stated in their face?

A. I would not.

The foregoing question and ans. are excepted to by attorney for plaintiff & overruled. Plaintiff excepted.

26 Q. You didn't understand that they were to be paid in cash, or issue them on that theory at all?

A. No, sir.

27 Q. I will get you to state about how many men the Dayton Coal & Iron Company is employing at the present time.

A. I suppose 600 or 700. I don't know just exactly.

28 Q. State whether it is true that there is more or less sickness existing among them and their families at all times.

A. Yes, sir; there is quite a good deal of sickness among them.

29 Q. I will get you to state whether or not orders similar to these are issued oftentimes to pay for necessaries of life when they are in financial distress or when they are suffering physically.

19 A. Yes, sir; it is often the case. We have cases now that we have been issuing punchout for three months without any work at all.

30 Q. I will get you to state whether or not merchandise is supplied and would have been supplied upon these identical orders at cash prices from your store the same as if anybody had walked in with cash and laid it down.

A. They would.

31 Q. State whether or not there is any discrimination against the employee or against the holders of these orders in favor of cash purchasers.

A. There is not.

32 Q. I will get you to state whether or not the parties to whom these orders are issued as individuals run accounts with the Dayton Coal & Iron Co. on your books.

A. They all have an account.

33 Q. And when these orders are issued you simply debit the account with that much?

A. With the amount of the order.

Cross-examination:

1 Q. In what denomination are these orders issued?

A. 1, 2, 3, 4, & 5 dollar pieces.

2 Q. Is there denomination greater than $5.00?

A. No; $5.00 is the largest.

3 Q. What is the purchasing power of a $5.00 punchout?

A. Five dollars in goods in the store.

4 Q. Would there be any discrimination made in a party presenting $5 in cash or $5 in punchout? Would you charge them any more?

A. No, sir; it has not been the custom of the company to do so.

5 Q. You say you keep them in arrears of the payments from the last of the month until about the 20th?

A. Yes, sir.

6 Q. You never pay any money to any employe s of laborers except on regular pay-days?

A. Yes, sir; we advance a great deal in cash if they come

20 and ask for cash.

7 Q. Is that a rule or an exception to a general rule?

A. Well, they never refuse to advance it where it is a meritorious case.

8 Q. You make it compulsory on your laborers to trade in your store, do you not?

A. No, sir; we do not. There is quite a number that hardly ever trade there.

9 Q. Isn't it a fact that you would dismiss from your employment any employee who made it a practice to trade somewhere else?

A. I know a number of instances where the men have worked five or six years and I don't suppose they have traded a dollar a year on an average.

10 Q. The Dayton Coal & Iron Company deals in real estate, don't it?

A. Not very much.

11 Q. They own a number of dwelling-houses in connection with their other property, do they not?

A. Yes, sir.

12 Q. These dwelling-houses are occupied exclusively by the laborers and employees of the company?

A. Yes, sir.

13 Q. I will ask you if they don't make it compulsory on the employees to occupy these houses.

Objected to by defendant's attorney because irrelevant, question and answer thought not being a matter involved in the controversy. Objection sustained, and plaintiff excepts.

A. During 1898 it was a rule of the company that those who worked for the company if they had to rent a house that they should rent from the company. If they owned their own house they were allowed to live in them; but where they were renting houses and the company had a house to rent they were required to live in the company's house; but during this year the question hasn't been up, and now we have twenty to twenty-five empty houses. For the last four months, at least, I don't know of any employees being requested to go into the company's house.

14 Q. Heretofore, however, you did require it on condition
21 of being discharged if they didn't comply with it.

A. That was a rule if they were renting houses and preferred not to rent from the company the company preferred to give some one else the work.

Objected to by defendant because incompetent and irrelevant under the issues framed in the case. Exception sustained, and plaintiff excepts.

15 Q. Referring again to this punchout and the rule of the company to make it compulsory on their employees to trade at the company's store, I will get you to state if this rule don't prevail with common laborers and with all the employees of the company except expert mechanics, such as you can't dispense with.

A. It does not. There are a number of common laborers, some of them colored, that never draw a dollar. I can give the names of a few of them. There is Warren Jones (colored), J. L. Webb, T. A. Smith, and some other coke-oven employees. I can't tell their names just now.

16 Q. Do you know of any instances in which this punchout was redeemed by the company in cash?

A. No, sir.

17 Q. Have any of the employees or payees of this company ever presented this punchout to you as cashier of the company for payment in cash?

A. No, sir; I think not; I don't remember that any of them ever asked any cash on it.

18 Q. How many employees has the Dayton Coal & Iron Co.?
A. I suppose there are five or six hundred.
19 Q. What does the monthly pay-roll amounts to?
A. You mean the amount of money?
20 Q. No; the entire thing?
A. It's variable. I will say anywhere from $12,000 to $20,000 per month.
21 Q. What per cent. of this is paid in punchout?
A. From forty to fifty per cent. of it is taken up in punchout. As a rule, the miners trade less. They take from 40 to 42
22 or 43 %. The colored men about the furnace usually trade more; usually about 50 to 51 or 52 per cent.
22 Q. Then if I understand you, this punchout is only issued for such time as the laborer- have in the office from the last of the month to the 20th of the month?
A. The punchout is issued every week day in the month if they call for it.
23 Q. Has it been a custom of the company heretofore to have what they call scrip days, and only issue scrip on those days?
A. No, sir; it has never been a custom to do that. If you desire an explanation of what is meant by scrip day, I will explain it. The scrip issued in the last week of the month is very light. The men draw as little as possible so as to have a little cash. On the first day of the next month they can draw to the amount of their credit in the back month, and then as they have the time to work back that amount drawn before pay day they can get in cash the amount due them on the past month.
24 Q. Are the coupons, of which this is made up, redeemable over there when detached?
A. No, sir; we go by the order on there. It is only good for what is unpunched.
25 Q. Suppose I bring that coupon that's punched out there, will you redeem that in goods if it's detached?
A. Well, I don't know; we don't often have a case of that kind. Unless we knew positively that it was punched out of that particular card, I don't know that the storekeeper would take it. He would be the one to decide that.
26 Q. Suppose that I owned this $2.00 punchout here and wanted to trade fifty cents of it, was to take my knife and clip out two coupons of twenty-five cents each and presented it over there for goods, would you redeem it?

The foregoing question is objected to by the defendant because not in issue in this cause. Exception overruled, and witness allowed to answer, subject*ion* to exception, but not considered in arriving at the judgment, and defendant excepted.

A. We take those punchouts and redeem them that we
23 know to be genuine. They are only printed by a printer, and any printer can print them. They are genuine when signed by the cashier and countersigned by the man issuing the

scrip, or the scrip agent, so we know that they are evidences of indebtedness against our company.

27 Q. Now, Mr. McKenzie, how do the prices on your merchandise, commissary supplies, etc., compare with the prices charged by other merchants for the same kind of goods?

A. I am not a merchant and I am not prepared to answer that question. I buy my goods at the company's store and their prices have been satisfactory to me. I am not posted as to what the prices in town are.

28 Q. I will get you to state if it isn't a fact that this punchout issued by the Dayton Coal & Iron Co. can be bought anywhere in Dayton for eighty cents off the dollar in cash?

A. I have never seen it bought, and don't know whether it is and sold for eighty or ninety cents. I have never seen the transfers made or been posted as to any sales.

29 Q. Are these punchouts ever redeemed in money in the hands of the payee or anybody else?

A. No, sir.

Redirect examination:

1 Q. The company does have monthly pay-days and they do pay their employees in cash on those days whatever is due them?

A. They do.

2 Q. And if a men don't want to take these orders or don't ask for them his wages are paid him in cash on pay-day?

A. Entire for the month; yes, sir.

3 Q. And the company doesn't require or insist that he take any of these orders?

A. No, sir.

4 Q. You talked awhile ago about there being some complaint about issuance of these orders. I will ask you whether or not that complaint arose from the operatives and employees or whether it arose from outside competitors of the Dayton Coal & Iron
24 Co.'s store. I mean the complaint about issuing punchout. The issuance of them at all.

A. The complaint about issuing is entirely from competitors.

6 Q. Like Mr. Barton and other merchants, who are in the same line of business?

A. Yes, sir.

7 Q. I will get you to state whether or not your employees request and whether the business demands a medium of payment to run them from month to month like these.

A. It does.

The foregoing question excepted to by complainant's attorney, and exception sustained, & defendant excepts.

8 Q. State whether or not the defendant makes such prices on its merchandise as to induce a large cash trade outside of its employees.

A. It does.

9 Q. Does the defendant employ in its scrip or store order office a number of clerks whose business it is to prepare such orders and keep accounts of employees with reference thereto and who are paid good wages therefor?

A. It does.

10 Q. Is it feasible or safe to keep on hands at the company's office at all times money sufficient to meet the demands of laborers made from one pay-day to the next?

A. It is not.

11 Q. You say a considerable per cent. of the laborers' wages has heretofore been taken up in store orders. State whether or not the major portion of these orders have been traded out without question at your store.

A. They have chiefly been presented for and redeemed in merchandise. Mr. Barton and another merchant or two have taken some of them and sued us for the cash.

It was agreed that the defendant was and has been for a number of years a corporation organized under the laws of Great Britain, having complied with the laws respecting such corporations in Tennessee on the 30th day of April, 1883, and since has continued to carry on and operate its business aforesaid since.

This agreement was to be considered as evidence and was in lieu of a certified copy of its charter.

This was all the evidence.

The defendant tenders this its bill of exceptions to the judgment of the court overruling its motion for a new trial, which is signed and sealed by the court and ordered to be made a part of the record.

August 19, 1899.

M. D. SMALLMAN, *Judge.*

Bill of Costs.

State and county tax	$5.00
C. G. Gillespie, clerk, rec'g & fil'g J. P. papers, 75; dkg., 30; judgment, 75; judgment for costs, 25; bill of costs, 50	2.55
W. L. Lillard, J. P., iss'g warrant, 25; judgment, 75; dkg., 15; bond, 50; certifying costs, 25	1.90
W. M. Brown, ex. warrant, 50; ex. 1 spa., 25	75
Witness G. C. McKenzie 1 day	1.00
	$11.20
N. M. Hensley, notary public, protesting 37 orders	98.75
	$109.95

Supreme Court Bill of Costs.

Appeal bond, 75; bill of costs, 50; transcript to supreme court, 10,000 wds., $10.00; certificate, 25; seal, 50; expressage, 25.	$12.25

26 STATE OF TENNESSEE, }
Rhea County. }

I, C. G. Gillespie, clerk of the circuit court of Rhea county, Tennessee, do hereby certify that the foregoing is a true and perfect transcript of the record and the bill of costs in the case of T. A. Barton *vs.* Dayton Coal & Iron Company, Limited, as the same appears of record in my office.

Witness my hand and the seal of said court at office, in Dayton, Tennessee, this 28th day of August, 1899.

[SEAL.] C. G. GILLESPIE,
Clerk of the Circuit Court of Rhea County, Tennessee.

27 Filed October 11th, 1899. Alex. McMillan, Clerk.

In the Supreme Court of Tennessee, at Knoxville.

DAYTON COAL & IRON CO., LIMITED, Appellant, }
vs.
T. A. BARTON, Appellee, }

Brief and Assignment of Errors of Burket, Miller & Mansfield, Attorneys for Appellants.

This is an action brought before a magistrate by T. A. Barton, in which he alleged that he was the *bona fide* holder of orders or punchout drawn or issued by appellant. Judgment for $50.00 and interest was rendered in favor of Barton, and the company has appealed from the judgment of the circuit court. There is little, if any, dispute as to the facts in the record. It appears from the undisputed facts that the company is a corporation organized under the laws of United Kingdom of Great Britain and Ireland and is engaged in the manufacture of pig iron, the mining of coal and the making of coke, and in the conduct of its business employs a force of about six hundred laborers. The company owns and runs a store, where it sells goods to its employees and such other persons as desire to purchase. The company also has a monthly pay-day, which is about the 20th of the month, and settles in cash with its employees on said pay-day. In the meantime, and to such of its employees as see fit to request same, it issues punchout in denominations of from $1.00 to $5.00. The plaintiff below purchased several of these orders, all of which are similar, except the name of the payee, and the following is a copy of one of said orders:

28

Face.

(25)	(25)	(25)	(25)	(10)	(10)	(10)	(10)
Good for all amounts unpunched.							(10)
Apr., 1899. $2. No. L. C. 15. Not transferable.			The storekeeper will supply goods to the amount of this order to Geo. Holston, in acc't with Dayton Coal & Iron Co., Limited. G. C. McKENZIE, *Cashier.*				
(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)

Back.

(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)
This order is not transferable, and can be used only by the party in whose favor it is made.							(10) (10)
(25)	(25)	(25)	(25)	(10)	(10)	(10)	(10)

It will be seen by reference to this order or punchout that the company gives an order on its storekeeper for goods, and that this order is in terms not transferable and is for use only by the party in whose favor it is drawn. It thus appears that there is a contract made and entered into by and with the company on the part of the persons receiving and accepting the order, and that the order is only redeemable in merchandise in the hands of the original holder. This is an express contract made by the parties. There is no pretense made in the record that there is any discrimanation against the holder of *the holder of* the punchout, or that the purchasing power of the order in the company's store is less than an equal amount of lawful money of the United States, nor is there a scintilla of evidence showing that there is any compulsion on the part of the company requiring employees during the month to take out punchout at all or in any amount, or that their positions are imperiled in case they fail to take it out; but it appears from the record that this is done for the mutual benefit of the company and its workmen. It is not practicable for a concern of this kind to pay weekly, and it is customary for all such concerns to pay monthly. It is a well-know- fact that many of the employees, and in fact a majority of the employees of concerns of this

kind, are poor people, and many of them often shift-
29 less. It is therefore necessary that some advances be made from time to time to supply the men with necessary food and clothing. This class of labor is also shifting. If the men were paid off at short intervals, the company would ofttimes be deprived of their services through their simple desire to wander. Also it is a matter of considerable labor and expense to keep the time and make out the pay-rolls for such a large number of men at frequent intervals. Therefore it is to the company's interest to pay monthly. On the other hand, if the men are supplied with such goods as are necessary for their well-being, it is to their advantage that they are enabled to receive the same, and the company, as a matter of course, makes or expects to make a reasonable profit on the goods, and therefore it is for the mutual benefit of employer and employees.

While this case involves only fifty dollars, it is a test case of much importance and of vital interest to the industrial establishments of the State of Tennessee and the thousands of men employed therein.

On the 17th day of March, 1899, the legislature of Tennessee passed an act, contained in chapter 11 of the Acts of 1899, of which the following is a copy:

"CHAPTER 11—HOUSE BILL NO. 210.

An act requiring all persons, firms, corporations, and companies using coupons, scrip, punchout-, store orders, or other evidence of indebtedness to pay laborers and employees for labor or otherwise to redeem the same in good and lawful money of the United States in the hands of their employees, laborers, or a *bona fide* holder, and to provide a legal remedy for collection of same in favor of said laborers, employees, and such *bona fide* holder.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employees, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employé or *bona fide* holder in good and lawful
30 money of the United States, provided; the same is presented and redemption demanded of such person, firm, company or corporation using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employees, or if presented and redemption demanded as aforesaid by such laborers, employees, or *bona fide* holders, at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidences of indebtedness to such employees, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; provided, further said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary company store or other repository of such company, firm, person or corporation aforesaid.

SECTION 2. Be it further enacted, That any employee, laborer or

bona fide holder referred to in section 1 of this act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order, or other evidence of indebtedness, as defined in section 1 of this act.

SECTION 3. Be it further enacted, That nothing herein in this act contained is to be so construed as to legalize the issuance of use of scrip. That all laws in conflict with this act be and the same are hereby repealed.

SECTION 4. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

Passed March 17th, 1899."

Signed, etc.

31 It is our insistance that this act is obnoxious to section 8, article 1, of the constitution of Tennessee, which provides "that no man shall be disseized of his privileges or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land." And it is furthermore insisted by us that said act is obnoxious to that part of section one of the fourteenth amendment to the Constitution of the United States, which says, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law."

There is, perhaps, no question that has involved as much study and discussion as the construction of the clause of the Constitution of the United States just quoted, and this case fairly and squarely presents the question as to whether the act of the legislature of Tennessee is obnoxious to said fourteenth amendment, and therefore void.

In the case of Leep *vs.* St. Louis, Iron Mountain and Southern Railway Co. a question was presented as follows: Leep was employed to work for the defendant at a monthly rate, and before the expiration of the month was discharged. On the day of his discharge he demanded his wages at the contract rate, which the company refused to pay then, but agreed to pay at their regular payday, and thereupon suit was brought. It appears that the legislature of Arkansas had passed an act in substance providing that on the discharge of any employee working for any company, corporation, or person engaged in operating or constructing any railroad or railroad bridge his wages should then become due on the day of the discharge, and providing for a penalty for their non-payment, and providing that suit might be brought. A very learned discussion of the question is found in this case. It was held that the act in question was unconstitutional, null, and void as against natural

persons, but was constitutional as against the corporation sued, because it was a corporation, and there was reserved in its charter a power of amendment, and the legislation in question was
32 an exercise of that power.

Leep *vs.* St. L., I. M. & S. R'y Co., 41 Am. St. Rep., 109.

We call this court's attention to the fact that there is no power to amend the charter of appellant. The act does not purport on its face to be any amendment of said charter, and if said act was such amendment, then the act would not apply to laborers employed by individuals and would apply to laborers employed by corporations, and would be void *until* the constitutional provisions of Tennessee prohibiting class legislation.

It is a well known principle underlying all English and American legislation, secured in the bill of rights and set out in the Declaration of Independence, that all men are created free and equal and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and property, of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness. To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; but in order to secure these rights from invasion by caprice, by passion, and by prejudice, it is necessary that there shall be a government of law and not a government of men, and it is necessary that rights and privileges shall be secured to the citizen without abridgment from inconsiderate legislation, oftentimes fastened upon the body politic by designing and unscrupulous politicians, and it was for that purpose that the constitutional provision aforesaid was enacted. It has been said and truly that of all the rights of persons the one most essential to human happiness is the right to acquire and possess property, and this right necessarily includes the right to contract, for it is the *principle* mode of acquisition and is the only way by which a person can rightly acquire property by his own exertion. We concede that the right to contract is not unlimited. Duties to persons, to society, to the Government are imposed upon every individual. Every men undertakes to perform these duties, and necessarily surrenders some rights on account of his relation to others. He submits himself to such restraints and
33 *and* burdens as may conduce to the general comfort, health, and prosperity of the State. His enjoyment of his property and his right to contract is subject to the police power of the State. It is subject, where the duties exercised are of a public nature, to regulation by the State within legal and proper limits; as, for instance, the legislature can fix the maximum of charges in public warehouses and for carriage of freight and passengers by common carriers, and it can regulate millers, bakers, and in-keepers, because such property being devoted to the public use, the public has an interest therein. But even that power of regulation is not unlimited. Common carriers and telegraph companies cannot lawfully stipulate for exemption from responsibility for negligence of themselves or

their servants. But would any one insist that the State may say a common carrier shall only employ men of a certain height, or weight, or age, or that they should only pay a certain sum as wages? The State is not a paternal institution, regulating the affairs of its citizens as a father regulates the conduct of his child. There must be general principles, and the question is whether the Tennessee act quoted is an infringement of the inalienable right of citizens of the United States, or of any person dwelling or doing business within the United States, to contract.

By examination of every well-considered case it will be seen that the power of the legislature imposing conditions on contracts, or limiting the right to contract, or avoiding contracts made, is based in every case on some particular condition, and not on the absolute right to control. It is obvious that the right to contract cannot be limited by arbitrary legislation which rests upon no reason upon which it can be defended, for if it could the right would cease to exist and would become a license revokable at the will of the legislature, and the Government would become a despotism in theory and probably in fact. Such a power cannot exist, for if it could it would be subversive of the right to enjoy and defend, to acquire and possess property, and to pursue happiness, declared to be inalienable by the Constitution of the United States.

34 When the subject of contract is purely an exclusively private, unaffected by any public interest or duty to persons or society or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.

The legislature of Missouri by statute made it unlawful for any corporation, person, or firm engaged in manufacturing or mining to issue for the parment of wages any check or other token of indebtedness payable otherwise than in lawful money unless the same is negotiable and redeemable at its face value in cash or in goods, at the option of the holder, at the store or other place of business of the corporation, person, or firm, provided that the order, check, memorandum, person, or other evidence of indebtedness so issued should upon presentation and demand within thirty days from date of delivery thereof be redeemed by the person or corporation issuing the same in goods at the current cash market price for like goods or lawful money, as may be demanded by the holder. It was held by the supreme court of Missouri that the statute was unconstitutional.

State *vs.* Loomis, 115 Mo., 307.

The legislature of Texas passed an act that in the event a railroad company refused under certain circumstances to pay the indebtedness to the employee within fifteen days after demand it should be liable in addition to the amount due for 20% as penalty. This act was held to be unconstitutional because it was confined to railroads; but the supreme court of Texas also laid down the doctrine that the relation of railway companies to their servants as to acts of

employment and payment was a field in which special legislation had no right to enter.

San Ant. R'y Co. *vs.* Wilson, 19 S. W. Rep., 910.

It is also laid down in hundreds of cases that the legislature cannot regulate or restrain the rights of individuals to contract by making it unlawful for them to agree with each other that wages shall be paid at any specific time subsequent to the day on
35 which the labor by which they are earned be completed, or that the price of property sold shall be paid on a day subsequent to the sale. Such a contract, as to the time of performance, is necessarily harmless and purely an exclusively private concern, and can affect no one except the parties. It is an important means used in the acquisition of property, which sells for more on time than for cash. Labor commands higher wages when payable in the future than it does when paid at the time of performance. A large proportion of the business of the world is transacted on a credit. Nations, States, counties, towns, and persons contract debts payable in the future. The right of persons to sell and labor on a credit is everywhere and by all recognized as legitimate, and is protected by the Constitution in the declaration that the right to acquire and possess property is inalienable.

The legislature of Illinois, which State has a constitution very similar to that of Tennessee, passed an act requiring that every manufacturing, mining, quarrying, lumbering, mercantile, street, electric, and elevated railway, steamboat, telegraph, telephone, and municipal corporations and every incorporated express company and water company shall pay weekly each and every employee engaged in its business, and provided the penalty for non-payment, and made a violation of the statute a misdemeanor, and furthermore forbidding any of the parties named in the act from requiring its employees to accept wages at other periods. One McGrew entered into a contract with the Braceville Coal Co., in which it was stipulated that he should be paid only on the regular pay-day, which should be the first Saturday after the 10th day of each month. He entered the company's employment November 3rd and quit before pay-day and demanded his wages, and the company was indicted for a violation of the statute. Held, that the statute was unconstitutional.

Braceville Coal Co. *vs.* People, 37 Am. Sr. Rep., 306.

Said the supreme court of Illinois: "Property in its broader sense is not the physical thing which may be the subject of ownership, but is the right of dominion, possession, and the power
36 of disposition, which may be acquired every day, and the right of property preserved by the Constitution is the right not only to possess and enjoy it, but the right to acquire it in any lawful mode or by following any lawful industrial pursuit which the citizen in the exercise of the liberty guaranteed him chooses to adopt. Labor is the primary foundation of all wealth. The property which each one has in his own labor is a common heritage,

and, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty."

In Frorer *vs.* People, 141 Ill., 171, the supreme court of Illinois says: "The privilege of contracting is both a liberty and a property right, and if A is denied the right to contract and acquire property in the manner which he has hitherto enjoyed under the law and which B, C, and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract."

It is undoubtedly true that the people in their representative capacity may by a general law render that unlawful which in many cases had hitherto been lawful, but laws depriving particular persons or classes of persons of rights enjoyed by the community at large to be valid must be based upon some existing distinction or reason not applicable to others not included within its provisions.

Cooley's Constitutional Limitations, 391.

The legislature of West Virginia passed an act providing that all persons, firms, corporations, or associations engaged in mining coal, ore, or other minerals, or mining and manufacturing them or either of them, or manufacturing iron or steel or both, or any other kind of manufacturing, shall pay their employees as provided in the act—that is to say, it was rendered unlawful for them to issue for the payment of labor any order or other paper whatsoever unless the same purports to be redeemable for its face
37 value in lawful money of the United States, bearing interest at the legal rate and made payable to the employee or bearer and redeemable within the period of thirty days, providing that a violation of the act was a misdemeanor and fixing the penalty. One Goodwell was indicted for a violation of the act, and the act was held to be unconstitutional by the supreme court of the State of West Virginia in the case of The State *vs.* Goodwell, 25 Amer. Stat. Rep., 863, which is one of the leading case- of this kind in the United States, and the question in the case was by the supreme court of West Virginia said to be whether under the fourteenth amendment to the Constitution*al* of the United States the legislature could limit or forbid the right of contract between parties not under mental, corporeal, or other disability, when the subject of the contract is lawful, not public in its character, and the exercise of it is purely private and personal to the parties themselves. It was further held that liberty, as used in the Constitution, is not dwarfed into mere freedom from physical restraint or incarceration, but is deemed to embrace the right to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to the restraints necessary for the common welfare. "Liberty," said the court, "in its broad sense, means the right not only of freedom from servitude, imprisonment, or restraint, but the right to use our faculties in all lawful ways, to live and work where we

please, to earn our livelyhood in any lawful calling, to pursue any lawful trade or avocation." * * * "The rights of every individual must stand or fall by the same rules of law that govern every other member of the body politic under similar circumstances, and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens, and not of others, when there is no public necessity for such discrimination, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, and the mass of the community, and those who make the law, by another."

38 Nor is this principle changed, as we insist, by the fact that the Tennessee law purports to apply to all persons employing labor. Labor is an asset and property that is purchased, and the law that compels the employer of labor to pay only money for labor is a discrimination in favor of the person that buys other property and pays for it in other ways than by money.

The vocation of the employer as well as that of his employee is his property. Depriving the owner of property of one of its attributes is depriving him of his property under the provisions of the Constitution.

People *vs.* Otis, 90 N. Y., 48.

The right to use, buy, and sell property and contract in respect thereto, including contracts for labor, which is, as we have seen, property, is protected by the Constitution. If the legislature, without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to the lawful trade or business, then it may prevent the prosecution of all trade and regulate all contracts.

State *vs.* Goodwell, 25 Am. St. Rep., 867.

And in the same case the supreme court of West Virginia said that while corporations engaged in occupations in which the public had an interest or use might within certain well-defined limits be regulated, as, for instance, regulating the charges of railroad and telegraph companies, yet they knew of no well-considered case in which a statute has been upheld that undertook to regulate the dealings between employer and employees, even in this class of occupations, much less in cases that are not impressed with public trust or duty.

The claim is made that this class of legislation is sustainable in the exercise of the police power which every sovereign State possesses. That power is very broad and comprehensive, and is exercised to promote the health, safety, and welfare of society. Its limits cannot be defined accurately. No court, as far as we can ascertain, has been willing to attempt definitely to circumscribe it.

39 But this power, though broad and extensive, is not above the Constitution, and if the legislature passes an act ostensibly for the public health, safety, or welfare, and thereby destroys or takes away the property of a citizen and interferes with his rights or

personal liberty, then it is for the courts to decide whether it is a proper and reasonable exercise of the power, and if it is not to declare it void.

Such legislation as the legislation in question partakes of the nature of despotism. The supreme court of New York, *In re* Jacobs, 98 N. Y., 114, 50 American Reports, 636, said: "Such legislation may invade one class of rights today and another tomorrow, and if it can be sanctioned under the Constitution, while far removed in time, we shall not be far away in practical statemanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed, and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people, and a large range of other affairs long since in all civilized lands regarded as outside of governmental functions. Such governmental interference disturbed the finer adjustments of the social fabric and usually deranged the delicate and complicated machinery and caused a score of evils while attempting the removal of one."

The legislation declared unconstitutional in the N. Y. case just cited was an act for the alleged purpose of improving the public health, and prohibited the manufacture of cigars and preparation of tobacco in any form in tenement-houses. This cause contains some very useful and pertinent discussion of the constitutional provisions now under discussion, a few of which we cite.

"The third absolute right inherent in every Englishman is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions without any control or dominion save only by the law of the land." * * * "There may be such serious interruptions to the common and necessary use of property as will be equivalent to a taking within the meaning of the Constitution. When the law annihilates the value of property and strips it of its attributes, by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation and certainly within the constitutional provisions intended expressly to shield personal rights from the exercise of arbitrary powers." * * * "All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specific locality or exclude him from his own house, or restrain his otherwise lawful movements, except as such laws may be passed in the exercise by the legislature of the police power, which will be noticed later, are infringements upon his fundamental rights of liberty, which, under the Constitution, are protected." Speaking of police power, the court said: "The limit to the exercise *to* the police power can only be this: the legislature must have reference to the comfort or safety or the welfare of society. It must not be in conflict with the provisions of the Constitution." "Law will not allow the rights of property to be invaded under the guise of police regulation for the promotion of health, when it is manifest that such is not the object and purpose of the regulation." * * * "All sorts of restrictions

and burdens are imposed under the police power, and when these are not in conflict with any constitutional prohibition of fundamental principles they cannot be successfully assailed in a judicial tribunal, but, under the pretense of prescribing a police regulation, the State cannot be permitted to encroach upon any of the just rights of the citizen, which the Constitution intended to secure against abridgment."

In the case of The State *vs.* Fire Creek Coal & Coke Co., 33 W. Va., 188, found in American States Reports, 891, a West Virginia act was declared unconstitutional which declared it unlawful for any person, firm, or corporation engaged in mining or manufacturing and interested in merchandising to knowingly sell to any employee merchandise at a greater per cent. of profit than when selling to other customers buying like quantities for cash. This was decided to be an unjust interference with the rights, privileges, and property of both employer and employee. It was held that the remedy was in the hands of the employee; that he is not
41 compelled to buy from his employer, and if he does it is an unjust interference with the rights of both, and places upon both a badge of slavery by denying to the one the right of managing his own private business and assuming that the other has so little capacity and manhood as to be unable to protect himself or manage his own private affairs. Said the supreme court of West Virginia: "The statute is a procrustean bed. It consigns all ages and conditions to the same measure of treatment, regardless of their differences. It excludes all freedom in trade and all considerations of mutual benefit, and even charity. If the employer sells goods to the family of some friend in indigent circumstances at less than cost, then, under the statute, he must sell at the same price to all of his employees; but it is unnecessary to illustrate the vices, the crudities, and the injustice of the statute. That it is an attempt to do for private citizens under no physical or moral disabilities what they can best do for themselves is apparent. It selects miners and manufacturers as a class and denies to them privileges which are not only proper and legitimate in themselves, but also to some extent necessary and unavoidable in the conduct of business, privileges which concern private affairs solely, and which are enjoyed by all other classes of citizens. It is an attempt on the part of the legislature to do what in this country cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the rights of the employer and the employee. More than this, it is an insulting attempt to put the laborer under legislative tutilage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States.

To the same effect see Godcharles *vs.* Widesman, 113 Penn. St. Rep., 431.

The legislature of Massachusetts passed an act providing that no employer should impose a fine upon or withhold the wages or any part of the wages of an employee engaged at weaving for imperfections

that may arise during the process of weaving, and providing
42 for the imposition of a fine for the violation of the statute.

It was held by the supreme court of Massachusetts, in the case of Commonwealth *vs.* Perry, 31 American State Reports, that notwithstanding the fact that said act did not preclude the employer from bringing a suit for damages against the employee, the statute was unconstitutional, null, and void. Said the supreme court of Massachusetts: "The right to employ weavers and to make proper contracts with them is therefore protected by our Constitution, and the statute which forbids the making of such contracts or attempts to nullify them or impair the obligation of them violates the fundamental principles of right which are expressly recognized in our constitution." It was held in that case that the statute was a violation of both the Federal and State constitution.

The legislature of New York passed an act in substance making it a misdemeanor to sell or dispose of any article of food upon any representation or inducement than anything other than what is specifically stated to be the subject of sale or exchange is to be delivered or received or in any way connected with it, as a part of the transaction, as a gift, prize, premium, or reward to the purchasers. A tea company, in the transaction of its customary business, offered some crockery and glassware as gift in connection with the sale of a certain amount of merchandise, and in passing upon the case it was held by the N. Y. court of appeals that the act was unconstitutional, null, and void.

People *vs.* Gillman, 4 Am. St. Rep., 465.

In the above case the holding was that the statute was void under a clause of the constitution of New York almost similar to the clause of the Federal Constitution herein mentioned, and identical in meaning; and it was held that the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelyhood in any lawful calling, and to pursue any lawful trade or vocation is protected by the Constitution of the fundamental principles of our judicature. In that case the New York court said that this legislation was of a kind becoming very frequent of late, and was meant to protect some class in a community against
43 the fair, full, and free competition of some other class, some members of the former class thinking it impossible to hold their own against such competition. Now, it is evident that the Tennessee act was aimed at corporations engaged in large mining and manufacturing pursuits, and not at the farmer employing one or two laborers, but the sweeping provision was placed in the act to protect it from the ban of being class legislation, and while an act is construed by its four corners and the motive and policy of the legislature cannot be criticised, yet the purpose of the act—that is, its real purpose—can be looked to in determining whether or not the act is a legitimate exercise of the police power. Now, under the Tennessee statute the employer is prohibited from contracting with his employee as to the mode and manner of payment. The employé is likewise prohibited from contracting with his employer as

to manner and mode of payment. If the necessities of life compel the laborer to have an advance upon his wages, the employer is prohibited from making a contract regarding such advance, notwithstanding that the contract is advantageous to both parties.

In the New York case it was held that the statute prohibited a man owning articles of food to sell or dispose of it in such manner as he deemed fit. He was selling a lawful articles, a necessary of life; his manner of sale, while it reduced his profits on the particular sale, was by him deemed to increase the volume and amount of his trade and in the end increase his profits; the purchaser was pleased at the prospect of getting a bonus in his purchase; neither party was engaged in a business intrinsically or inherently unlawful or immoral. The statute was nothing else than an invasion of the liberty of the person—such invasion of the liberty of the person as our forefathers went to war to protest against and to prevent which nations have spent millions of blood and treasure. There is no more difference in the principle of the two statutes—that is, the New York and the Tennessee statutes—as far as the principle goes and the liberties are concerned, than there was in the acts of the British government that resulted in the Revolution and its invasion of our liberty.

44 The fact that the laborer can or cannot work the entire month without receiving an advance on his wages does not alter the case. His fundamental and valuable rights are invaded, weakened, limited, and destroyed by the legislation under consideration.

The New York court of appeals in the last above-cited case, discussing police power, says that it is true that generally it is for the legislature to determine what laws and regulations are needed to protect the public health and conserve the public comfort and safety, but these measures must have some relation to the ends: "The court must be able to see upon a perusal of the enactment that there is some just and reasonable connection between it and the ends above mentioned, and that, unless such relation exists, the enactment cannot be upheld as an exercise of the police power."

To follow this reasoning further, a laborer in Tennessee, working for his employer, accepts an order on the store and is charged on the books of the company with the amount of the order. At payday the company owes him only the balance remaining due on his wages after the order is charged. Yet this act says that notwithstanding he agreed to take so much of his wages voluntarily in goods, and notwithstanding the fact that the purchasing power of his order is equal to an equivalent in cash, and notwithstanding that the laborer has traded this order to some other person, perhaps a rival merchant, for goods, that the company issuing the order is obliged to redeem it in cash, in plain violation of a specific contract made between parties *sui juris*, under no legal disability and presumably in every way capable of taking care of themselves.

The Pennsylvania courts have given statutes of this class much attention, and inasmuch as Pennsylvania has more laborers than any other States in the Union, constituting a large voting class, whose

alleged interest the political legislator in anxious to protect, many of these acts have been passed. One was declared unconstitutional in the case of Goodcharles *v.* Widesman, 113 Penn., 431. In that case an act was passed declaring void all orders given by employers engaged in the business of manufacturing to their workmen, payable in goods. The supreme court of Pennsylvania said, speaking of certain sections of the act, being the sections above referred to, "They are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do what in this country cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike upon the right of the employer and the employee. The employee may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal; and every law that undertakes to prevent him from so doing is an infringement upon his constitutional privileges, and therefore vitious and void."

Another Pennsylvania act required monthly payment of wages and was declared unconstitutional, inasmuch as it amounted to making a contract between the parties against their will, and it was held that the act could not mature the payment of wages before the time agreed upon by the parties.

Bauer *v.* Reynolds, 3 Penn. Dist. Rep., 502.

Another Pennsylvania act which provided that the wages of miners should be paid in lawful money of the United States was held unconstitutional, so far as it attempted to preclude minors from making valid contracts to accept other than money in payment of their wages.

Showalter *v.* Ehlan, 5 Pa. Sup. Ct., 242.

A Missouri act was declared unconstitutional by the supreme court of Missouri which provided that it should be unlawful for any person, form, or corporation engaged in manufacturing or mining to pay out or circulate for the payment of wages of any laborer any order, check, or memorandum, unless the same was payable in lawful money of the United States.

The principle underlying the case at bar was enunciated and approved by this court in the case of Bank *v.* Vivine Grocery Co., 13 Pick., 609, in treating of the unconstitutionality of chap. 129 of the Acts of 1895, the effect of the second section of the act being to prevent any person being in debt from selling or disposing of his property except for cash and providing a remedy in case of violation of the act. Said this court: "It is, and correctly, insisted that while this act does not deprive him absolutely of his property, it takes away from him that element of its value which consists in the right to use and legitimately dispose of it, and here it must not be forgotten that we are not dealing with the question of the insolvent debtor conveying his property or any part of it or of the solvent debtor conveying his property or any part of it for the purpose of hindering, delaying, or defeating creditors, for the

act does not stop with the declaration that such disposition, if made for the purpose of preferring one or more creditors, shall be void, but adds that where it has that effect it shall be void, and as any transfer of any part of the property of the debtor, however solvent, to a creditor — a preference to that extent, it is manifest that this is a limitation upon the right for a proper purpose by a solvent debtor to convey any part of his property at all if in so doing he shall satisfy any of his debts. It was decided in the case of Stratton Claimants *v.* Morris Claimants, 5 Pickle, 497, that when the constitution of this State was formed the right to own and hold, to enjoy, to alien, to devise, and to transmit property by inheritance was enjoyed to the fullest extent and perfection of absolute right, and one of the object- of the constitution was to protect and preserve this right. To take from property its chief element of value and to deny to the citizen the right to use and transmit it in any proper and legitimate method is as much de*r*piving him of his property as if the property itself were taken."

In the case of Butchers' Union *v.* Crescent Cit*h*, 111 U. S., 746, the Supreme Court dealt extensively with the question of what legislation properly came within the proper definition of police power, a term very broad and that has covered more sins than the
47 mantle of charity. Justice Field said: "The common business and callings of life, the ordinary trades and pursuits, which are in-ocuous within themselves and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands and — hinder his employing this strength and dexterity in what manner he thinks proper without injury to his neighbor is a plain violation of this most sacred property. It is a manifest encroachment both upon the just liberty of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the other from employing whom they think proper."

The fact that appellant is an alien corporation does not alter the case or make any different rule from what it would be if it were a domestic corporation.

Yick Wo *v.* Hopkins, 118 U. S., 356.

The case just cited involved the constitutionality of an ordinance of the city and county of San Francisco providing that it should be unlawful for any person to engage in the laundry business within the corporate limits without first having obtained the consent of the board of supervisors, except the same be located in a building

constructed either of brick or stone. This act was passed under the guise of regulation for the purpose of preventing Chinaman from carrying on the laundry business in the city of San Francisco, though the act on its face indicated no such purpose. The Supreme Court of the United States, in a well-considered case, held the ordinance void, because it was
48 within the prohibition of the fourteenth amendment to the Constitution of the United States. This ordinance did not state that the privilege should be granted to citizens and withheld from Chinese; on its face it appeared to be simply a regulation of the business under the police power, and required, as a condition precedent to carrying on the business, a permit from the city commissioners. The ordinance was held void as obnoxious to the constitutional provision mentioned. Said the Supreme Court of the United States: "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and the course of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts, and the law is the definition and the limitation of power. It is, indeed, quite true that there must always be lodged somewhere and in some person or somebody the authority of final decision, and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of public government, exercised either in the pressure of opinion or by means of the suffrage; but the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race, in securing to man the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts bill of rights, the government of the Commonwealth may be a government of laws and not of men, for the very idea that one man may be compelled to hold his life of the means of living or any material right essential to the enjoyment of life at the mere will of another seems to be intolerable, and in a country
where freedom prevails as being the essence of slavery
49 itself.

A statute prohibiting the manufacture or sale for food of any substitute for butter or cheese produced from pure, unadulterated cream or milk is unconstitutional.

People *v.* Marks, 52 Am. Rep., 34, a N. Y. case.

The act was held to be obnoxious to the 14th amendment to the Constitution of the United States, it being further held that under the said constitutional amendment it was the inalienable right of every person to be free in the enjoyment of his faculties, subject only to such restrictions as are necessary for the common welfare.

The complaint in this case does not arise from any laborer, but is made by a rival merchant, who desires to secures such construction of the act in question as will enable him to discount the punchout or to sell goods for the same. His testimony is found in the Transcript, pages 5–11. He shows that he did not make any effort to obtain goods for this punchout, but that he wanted the cash and only the cash therefor.

The dealings of the company are shown by the testimony of G. C. McKenzie (Transcript, pp. 16 to 27), and the substance of his testimony has heretofore been set out.

Private corporations are persons to whom equal protection of the laws must not be denied, and are persons within the meaning of the 14th amendment to the Constitution of the United States.

Santa Clara Co. *v.* Sou. Pac. R. R. Co., 118 U. S., 394.
Minn., etc., R'y Co. *v.* Herrick, 127 U. S., 210.

Assignment of Errors.

First. For the reasons heretofore stated the court erred in rendering judgment against the defendant for any amount and should have dismissed the suit.

From the decisions cited to support the propositions hereto-
50 fore made we insist that this assignment is good; that the contract and kind of contracts forbidden by this statute do not improperly affect the health, morals, peace, or welfare of the community, and are within the protection of the Constitution of the United States and of the State of Tennessee.

We furthermore insist that this court cannot consider whether the act in question is beneficial or deleterious in its actual working; that it cannot weigh in the balance the good or the evil that would result therefrom and decide the case one way or the other, whether it would be productive of more good than evil. We confidently insist that the contracts relied upon in this case as a bar to plaintiff's action are in no respect deleterious to the health, morals, peace, or welfare of the community, and that, therefore, they cannot be interfered with by the legislature.

Respectfully submitted.

BURKETT, MILLER AND MANSFIELD,
Attorneys for Appellant.

51 Filed October 11th, 1899. Alex. McMillan, Clerk.

In the Supreme Court at Knoxville, Tennessee.

THE DAYTON COAL & IRON CO.
vs.
T. A. BARTON.
} Law Cause from Rhea County.

Reply and Brief of B. G. McKenzie, Attorney for Defendant in Error.

Cause.

This is an action brought by defendant in error on fifty dollars in store orders issued and used by the Dayton Coal & Iron Co., a

corporation engaged in the coal-mining and the pig-iron manufacturing business at Dayton, Tennessee. This company also runs in connection with its business a large company store and issues to employees and other parties store orders in pay for labor, etc., which purports to be redeemable at the company store of said concern in goods, and purports to be "not transferable." This suit was brought — a J. P., and judgment rendered by him in favor of defendant in error. Upon appeal by the plaintiff in error a similar judgment was rendered by the circuit judge. The plaintiff thereupon appealed and assigned errors. There is no other question before this honorable court but the constitutionality of the Acts of 1899, chap. 11, Tenn. legislature. There is no dispute or contention over the facts, except it is denied that plaintiff in error is a foreign corporation.

The only assignment of error is that the Act of 1899, chap. 11, under which this action is brought, is unconstitutional. We insist that the act is constitutional and a good and wholesome law.

This act requires all persons, firms, companies, and corporations using scrip, store orders, punchout, or other evidences of indebtedness to pay laborers and employees or otherwise to redeem the same in good and lawful money of the United States in the
52 hands of such laborers, employees, or any *bona fide* holder if presented at a regular pay-day of the company, person, firm, or corporation to employees or laborers and redemption demanded or if presented and redemption demanded at any time not less than thirty days after its issuance or delivery, etc. Section 2 of said act creates a cause of action for the face value of such store order, etc., upon such demand and refusal of redemption on the part of the concern or person using said store orders, etc., in favor of any *bona fide* holder of the same.

See Act 1899, chapter 11.

The facts show that defendant in error, T. A. Barton, is the *bona fide* holder of the store orders sued on; that these orders were all issued and delivered after the passage of chap. 11, Acts 1899, in pay for labor, etc.

See copy store order, Trans., page 15.
Testimony of G. C. McKenzie, Trans., 16–27.
T. A. Barton, Trans., 5–15; evidences of indebtedness, Trans., 2, 3.

The above proofs show that demand was made and redemption refused by plaintiff in error before this action was brought, etc.

The mere fact that T. A. Barton, the defendant in error, is in the same line of business as the plaintiff in error—that is, merchandising—certainly will not weigh against his right to recover under the law in question, although it seems that the plaintiff in error, through its able counsel, seems to think it should from the statement in their able brief, but we believe in allowing every man to embark in any business that is lawful he sees proper, and further believes that unjust and oppressive monopolies should be prevented by legis-

lation, so as to allow laborers to trade where they can do best for themselves and family, without being compelled to trade at the commissary of their masters and purchase cheap goods at long prices, with their store orders, etc., issued and used for profit and as a source of oppression by great concerns that employ a large number of laborers and employees. This scrip, store order, and
53 punchout business has got to be — great, unjust, and crying evil, and public justice has long been demanding legislative regulation of the same to protect the weak against the strong—to prevent fraud and oppression. The legislature has the right to regulate business. It has even regulated the practice of medicine and contracts growing out of same.

See Haworth *v.* Montgomery, 7 Pick., 16.

The plaintiff in error in the brief of counsel cites numerous authorities from other States, starting with the case of Leep *vs.* St. L., I. M. & S. R'y Co., 41 Am. St. Rep., 109. It will be seen this case only applied to corporations, was held constitutional, and the question as to the constitutionality of an act similar to the one now involved in this cause, which applies to all persons, firms, corporations, etc., was not before the court. The other cases cited are cases that were held, or, at least, a majority of them, unconstitutional, because of class legislation. The other causes are not authority. The Peel Splint Coal Co. case cited and relied on by defendant in error, together with the Tennessee authorities relied on and cited herein, we insist answers completely every argument or authority presented or relied on by plaintiff in error. The Peel Splint Coal Co. *v.* West Va., 17 L. R. A., 385, is in accord with Tennessee authorities. The Peel Splint Coal Co. case is the sound doctrine for this case. It was an act prohibiting any firm, corporation, or person engaged in any trade or business from issuing, selling, delivering, etc., to employees, in payment or advances on labor, any scrip, token, draft, check, or other evidences of indebtedness payable or redeemable otherwise than in lawful money, and, if so issued, it was to be taken, construed, and held in all the courts to be a promise to pay the same in lawful money to the lawful holder, etc.; according to its promises, it makes it a misdemeanor to violate said act. This act was held constitutional, and is the leading authority. See said case, 17 L. R. A., 385. Our Supreme Court in the case of Dugger *vs.* Insurance Co. said: "Disseizen of privileges or depriva-
54 tion of property otherwise than by the law of the land or due process of law is not made by the Acts of 1893, chap. 107 & 1, making void all stipulations in insurance policies which limit liability to less than the full amount of loss," etc. The Supreme Court further says in that case: "That the equal protection of the law is not denied by such act by making such stipulations void. See Dugger *v.* Insurance Co., 11 Pick., 245–261, inclusive. In Knoxville *v.* Bird our Supreme Court holds that it is not the impairment of the obligations of a contract, in a constitutional sense, for a city to pass an ordinance forbidding the erection of

wooden buildings within fire districts, although the contract was made to do so before its passage.

See Knoxville *v.* Bird, 12 Lea, 121–'4.

The great evil of the issuance of scrip, punchouts, and store orders and such like is known in this country to every sane man. It has got to be in later years a great source of oppression in the hands of mammoth corporations, persons, and concerns which employ a large number of employees and laborers, and run in connection with their business commissaries or company stores, issue store orders, punchouts, and scrip to employees in pay for labor, which are redeemable in goods at said commissaries or company stores in goods. These concerns or persons have stated pay-days thirty days off; the average laborer requires his daily earnings upon which to live. Goods are sold at long profits by these concerns, and when pay-day arrives the laborer has nothing due him because he has been forced to draw store orders and trade at the commissaries of these concerns or starve. These great and strong concerns thereby oppress the weak. It has grown to be a grave matter of public concern that called for legislative action. This evil existed back in the days of Williams the Fourth, and before that time and to remedy this evil what is known as the truc*t* act was passed. Black in his law dictionary defines the "truc*t* act" as an act passed to abolish what is commonly known as the truck system under which employers were in the habit of paying their laborers in goods or of requiring them to purchase goods at certain shops. The object was to prevent fraud on the laborers and compel payment of their wages in lawful money. This great evil exists today worse than ever before, and the right to pass such acts for the prevention of "truck system" was recognized to exist under the police power of the government even then.

See Peel Splint Coal Co. *vs.* West Va., rehearing under the head of "the scrip act," 17 L. R. A., 395. This power has ever existed and been recognized in Tennessee in many decisions. See Transportation Co. *v.* Block, 2 Pick., 392; Man *v.* Western Union Tel. Co., 1 Pick., 529. In these cases the supreme courts hold that contracts exempting corporations from liability for the negligence of their employees are void and cannot legally exist. See on this subject Satterfield *v.* Coleman, 2 Head, 264; Taylor *v.* Taylor, 12 Lea, 490; Truss *v.* State, 13 Lea, 311; also Queen Ins. Co. *v.* Leslie, 47 Ohio St., 409.

This act also provides a civil remedy in favor of any *bona fide* holder of such store orders, etc., on presentation and demand for redemption if such redemption is refused. See Act 1899, chap. 11, section 2.

Again, as to the constitutionality of the acts, we insist that an act similar to the present one has been before the supreme court of West Va., and there held constitutional in elaborate opinions delivered by the able judges of that court. See case of Peel Splint Coal Co. *vs.* West Va., 17 L. R. A., p. 385, and authorities there cited.

Also the right of the legislature to pass such acts is elaborately discussed and upheld in the case above cited and in the case of Hancock *vs.* Yaden, L. R. A., vol. 6, p. 576, and authorities there cited. See also Commonwealth of Mass. *vs.* Josiah Perry, L. R. A., vol. 14, p. 325, and authorities there cited.

All contracts and rights are subject to the police power of the State; for instance, regulating sales of unwhol-some food, liquor, fire insurance, as well as all contracts. See Dugger *vs.* Ins. Co., 11 Pickle, 245; Marr *vs.* Bank of West Tenn., 4 Lea, 585; Corp.
56 of Knoxville *vs.* Bird, 12 Lea, 121–'4; Johnson *vs.* The State, 3 Lea, 474. This act was passed to protect the laboring classes from the fraud and oppression of employers, and this is not the first legislation on the subject, for we find similar legislation to protect servants and laborers far back; it was needed then and much moreover now.

See Peel Splint Coal Co. *vs.* W. Va., L. R. A., vol. 17, p. 385, and authorities there cited. Especially the attention of the honorable court is called to the discussion of the "Truck act," under the head of the "Scrip act," on page 395. Every intendment is in favor of the constitutionality of the act, and the presumption is the legislature acted properly.

See United States Reports, vol. 94, p. 113, case of Munn *vs.* Illinois. Such is the rule in Tennessee, so well settled that we deem it unnecessary to cite other authority.

This statute requires the redemption in cash of all store orders, punchouts, etc., issued or used by all persons, firm-, corporations, or companies, in the hands of any *bona fide* holder, if presented and redemption demanded, etc., and any and all stipulation- written or printed on the store orders, punchouts, or scrip by the plaintiff in error after the passage of this act, and which conflicts with the provisions of the said act, are absolutely void, and the said act is as much a part and parcel of the stipulations of each and every store order issued after its passage as if the act had been copied in the face of the same and *the* makes the same so read and conform to its provisions. Nothing is better settled in this State than this proposition.

See Dugger *vs.* Ins. Co., 11 Pick., 245, and authorities there cited.

This act applies to all persons, firms, corporations, and companies using store orders, scrip, etc. It is general in its application and applies to every one, and hence no objection can be urged because class legislation; no such objection exists.

This act attempts to justly *to* regulate business, is not oppressive, and its object is to protect the weak against the strong, pre-
57 cent fraud and unjust oppression, to compel employers to redeem their paper, and thus labor receives its full pay, which is just.

This act does not conflict with or take away any constitutional

right, and it should be sustained, and defendant in error should have his judgment of the circuit court affirmed.

B. G. McKENZIE,
Att'y for Defendant in Error.

58 DAYTON COAL & IRON CO. (LIMITED) *vs.* T. A. BARTON. } Opinion.

This is an appeal in the nature of a writ of error from a judgment rendered in the circuit court of Rhea county in favor of T. A. Barton and against The Dayton Coal and Iron Company, Limited, for $50.00 and costs of suit.

The defendant company is a private corporation organized under the laws of Great Britain, and engaged in manufacturing iron, mining coal, and making coke, at and near Dayton, Tennessee. It also conducts a general merchandise store, from which it sells goods to its employés and to others desiring to buy.

In the operation of its furnaces, mines, and coke ovens it employs from five hundred to six hundred laborers, whose monthly wages aggregate from $12,000 to $20,000. These wages are paid partly in orders on the company's store for merchandise, called "punchouts," and partly in money. Punchouts are issued any day and for all wages then earned, to all laborers desiring them, but money is paid monthly only on what is called the regular pay-day. This day comes about the 20th of each month, and at that time all wages earned up to the first day of that month and not previously paid in punchouts are paid in money. No cash is ever paid on the regular pay-day of any month for wages earned during that month, but, so far as payments in money are concerned, the company's method keeps it always in arrears about twenty days.

As a result of that plan the company has heretofore paid only about one-half of the aggregate wages of its employés in cash, the other one-half being paid in punchouts, which are shown to be worth considerably less than money on the general market, though always redeemable at their face value in merchandise at the company's store. The punchouts are in denominations of from one dollar to five dollars and are in the following form:

Face.

(25)	(25)	(25)	(25)	(10)	(10)	(10)	(10)

Good for all amounts unpunched. (10)

(10)

Apr., 1899.
$2.
No. L. C. 15.
Not transferable.

The storekeeper will supply goods to the amount of this order to Geo. Holston, in acc't with Dayton Coal and Iron Co., Limited.

G. C. McKENZIE, *Cashier.*

(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)

Back.

(5)	(5)	(5)	(5)	(5)	(5)	(5)	(5)

This order is not transferable, and can be used only by the party in whose favor it is made. (10)

(10)

(25)	(25)	(25)	(25)	(10)	(10)	(10)	(10)

The plaintiff Barton, who is a merchant at Dayton, sold to certain of the company's employés goods to the amount of $50.00, and in payment therefor received from them twenty-seven of these punchouts, aggregating that sum, at their face value. These he presented to the company on a regular pay-day and demanded their redemption in cash. His demand was refused, and thereupon he brought this suit to compel their payment and obtained the judgment from which the company prosecutes this appeal in error. He bases his action on sections 1 & 2 of chapter 11 of the Acts of 1899. Those sections are in the following words:

"SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employés, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employé or *bona fide* holder in good and lawful money of the United States: Provided, the same is presented and redemption demanded of such person, firm, company or corporation using

same as aforesaid, at a regular pay-day of such person, firm,
60 company or corporation to laborers or employés, or if presented and redemption demanded as aforesaid by such laborers, employés, or *bona fide* holders at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidences of indebtedness to such employés, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; provided, further, said face value shall be, in cash, the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"SEC 2. Be it further enacted, That any employé, laborer or *bona fide* holder referred to in section 1 of this act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid, for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in section 1 of this act."

From the facts already recited it is clear that the plaintiff purchased the instruments sued on fairly, honestly, and at a reasonable price, and hence that he is a *bona fide* holder within the meaning of the statute, and that he is therefore entitled to recover their face value in money if the statute is a valid law. It matters not that the punchouts recite on their face and also on their back that they are "not transferable," since the statute declares in positive terms that they shall be redeemable in the hands of any *bona fide* holder, whether he be the original payee or another person. Besides, the admitted custom of the company to redeem its punchouts in merchandise to any one presenting them and the proven knowl-
61 edge of that fact on the part of the plaintiff give him the same standing as if they were payable to bearer in express words.

But the company denies the validity of the statute. It says that the act unjustly and arbitrarily curtails the freedom of contract between employer and employé, and thereby violates that part of section 8 of article 1 of the constitution of Tennessee, which provides "that no man shall be * * * deprived of his life, liberty, or property but by * * * the law of the land," and of that part of section 1 of the 14th amendment to the Constitution of the United States which provides that "no State shall * * * deprive any person of life, liberty, or property without due process of law."

The words "man" and "person," as used in those provisions respectively, include corporations (Railroad *vs.* Harris, 99 Tenn., 705; Harbison *vs.* Knoxville Iron Co., 103 Tenn., —; Dugger *vs.* Ins. Co., 95 Tenn., 250; Turnpike Co. *vs.* Sanford, 164 U. S., 578; Railway *vs.* Ellis, 165 U. S., 154), and the words "liberty" and "property" as used in both include the right of lawful contract as to labor and

its compensation. (*In re* Jacobs, 98 N. Y. S. C., 58 Am. R., 640; Allgeyer *vs.* Louisiana, 165 U. S., 589; Holden *vs.* Hardy, 169 U. S., 391; Powell *vs.* Penn., 127 U. S., 684; Slaughter-house cases, 16 Wall., 127; Dugger *vs.* Ins. Co., 95 Tenn., 252; Bank *vs.* Divine Grocery Co., 97 Tenn., 611, 612; Harbison *vs.* Knoxville Iron Co., 103 Tenn., —); consequently the defendant is entitled to the same protection against the forbidden deprivation as if it were a natural person.

The deprivation in the present instance, such as it may be, is sought alone through and by virtue of the legislation heretofore set out in this opinion, and if that legislation is entitled to recognition as a valid statute, then this action is maintainable; otherwise it is not.

The act does curtail the company's right of contract, so far as to make its punchouts payable in money instead of goods, at the election of any *bona fide* holder, and when presented on a regular payday, or as much as thirty days after issuance.

This, however, is not sufficient of itself to vitiate the act. The right of contract was never unlimited, but always subject to
62 the law's control. It cannot be affected except by "the law of the land" or by "due process of law" (which means the same thing. Davidson *vs.* New Orleans, 96 U. S., 101; Railroad *vs.* Harris, 99 Tenn., 704; Cooley's Const. Lim., 5th ed., 431; Black's Const. Law, 499); but it may be controlled by such law or process as is necessarily implied from the provision that it shall not be done otherwise. Harbison *vs.* Knoxville Iron Co., 103 Tenn., —.

It follows, then, that the curtailment contemplated, though in some measure a deprivation of an element of "liberty" and "property," is valid, if the act in question can properly be called "the law of the land" or "due process of law."

In ascertaining whether or not it is entitled to be so called it is of no consequence that the right of contract between employer and employé as to the method of paying wages was free from such restriction as the act imposes when the fourteenth amendment to the Federal Constitution was adopted, or when our State constitution was adopted, for the phrases "due process of law" and "law of the land" appearing in thos- instruments, respectively, were not there employed with reference to then existing laws only, but with reference to any and every valid law that might be in existence in the respective governments at the particular time, in the near or remote future, when an effort might be made to impair or take away the right of life, liberty, or property. The science of law, like the science of government, is progressive, and those phrases were intended to embrace all valid legislation that might, from time to time, be enacted to meet the changed conditions of society resulting from the growth of business and the advance of civilization. Hurtado *vs.* California, 110 U. S., 531; Holden *vs.* Hardy, 169 U. S., 386; Harbison *vs.* Knoxville Iron Co., 103 Tenn., —.

All "legislative authority" of the State is vested in the "General Assembly" (Const., art. 2, sec. 3), and every enactment of that body whenever passed has the force of a valid law, unless it be in conflict

with some delegated power of the Federal Government, or
63 with some restriction of the State constitution. Reelfoot Lake Levee District *vs.* Dawson, 97 Tenn., 159. So long as within those bounds legislation is not subject to annulment by the courts upon the supposed ground of opposition to natural equity or to the inherent right of freemen, or the like. Stratton Claimants *vs.* Morris Claimants, 89 Tenn., 512; Henley *vs.* State, 98 Tenn., 682.

Concededly and obviously the present act is not in conflict with any other provision of the Federal or State constitutions than those against deprivation of life, liberty, or property; and it is not in conflict with them if it is in reality "the law of the land" or "due process of law," as to the subject embraced in it.

Being general in its terms and scope, embracing equally every employer and employé in like situation and circumstances in the State, and enforcible by ordinary suit, it is free from valid objection on the latter ground, and is in all respects entitled to full recognition and application as "the law of the land" and "due process of law." Stratton Claimants *vs.* Morris Claimants, 89 Tenn., 521; Henley *vs.* State, 98 Tenn., 698; Sutton *vs.* State, 96 Tenn., 710; Harris *vs.* State, 99 Tenn., 705; Dent *vs.* West Virginia, 129 U. S., 124; Caldwell *vs.* Texas, 137 U. S., 697; 2 Tucker's Const. U. S., sec. 390.

The question is more elaborately considered in the late case of Harbison *vs.* Knoxville Iron Company (103 Tenn., —), wherein the same act was adjudged valid without reference to the police power of the State, and also as a wholesome police regulation. As there said, the object of the legislature was to place the employer and employé more nearly on an equality with respect to wages, as well as by that means to promote public peace and good order and lessen the growing tendency to strife, violence, and bloodshed in important departments of useful trade and business. The opinion delivered in that case is referred to for a full consideration of the objection here made to the act, and for the court's reasons for holding it to be a valid law.

Let the judgment be affirmed.

CALDWELL, *J.*

64 Supreme Court of Tennessee, at Knoxville, September Term, 1899.

SATURDAY, *November 18th*, 1899.

Court met pursuant to adjournment.

Present and presiding: The Honorable Chief Justice D. L. Snodgrass and Associate Justices W. C. Caldwell, Jno. S. Wilkes, W. D. Beard, and Sam. G. Shields.

The minutes of yesterday were read and signed, when the following proceedings were had, to wit:

DAYTON COAL & IRON CO., LIMITED,
vs.
T. A. BARTON. } Affirmed.

This cause was heard on November 19th, 1899, on the transcript of the record from the circuit court of Rhea county, the assignment of errors, and argument of counsel; from all of which this court is of the opinion that the statute of the State of Tennessee constituting chapter 11 of the act of 1899, whose validity has been drawn in question by the plaintiff in error, on the ground that it is repugnant to the fourteenth amendment to the Constitution of the United States, and also to the eighth section of the declaration of rights of the constitution of Tennessee, is not repugnant, either to said 14th amendment to the Constitution of the United States or to said declaration of rights. The same is therefore decreed, and it is further decreed that said statute is in all things valid.

It is therefore decreed further that there is no error in the record and judgment of the circuit court is affirmed.

And it appearing that said judgment, together with interest thereon to the present date, amounts to the sum of $51.81, fifty-one dollars and eighty-one cents:

It is therefore adjudged that T. A. Barton recover of Dayton Coal & Iron Company, Limited, the sum of fifty-one dollars and eighty-one cents, together with costs of the lower court, for which executions will issue. It is further adjudged that T. A. Barton
65 & 66 recover of Dayton Coal & Iron Co., Limited, and of W. B. Miller, the surety on its appeal bond, all the costs of the appeal, for which executions will issue.

And to all of the foregoing judgment Dayton Coal & Iron Company, Limited, excepts.

67 In the Supreme Court of Tennessee.

DAYTON COAL & IRON COMPANY, LIMITED,
vs.
T. A. BARTON. } In Error.

To the Honorable David L. Snodgrass, chief justice of the supreme court of the State of Tennessee:

The petition of the Dayton Coal & Iron Company, Limited, respectfully shows that on the 18th day of November, A. D. 1899, the supreme court of the State of Tennessee rendered a decree against your petitioner in a certain cause, wherein T. A. Barton was defendant in error and your petitioner was plaintiff in error, for the sum of fifty-one dollars and eighty-one cents ($51.81) and costs, and awarded execution thereon, as will appear by reference to the record and proceedings in said cause, and that said court is the highest court of said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said decree and proceedings to the Supreme Court of the United States by writ of error, under the statutes of the United States authorizing writs of

error to State courts, and especially under section 709 of the Revised Statutes of the United States, because in said suit the said complainant sought to recover against your petitioner under and by virtue of a certain statute of the State of Tennessee, constituting chapter 11 of the Acts of 1899, and your petitioner drew in question the validity of said statute, on the ground that it was repugnant to the fourteenth amendment to the Constitution of the United States, and on this ground denied complainant's right to recover, and the decision of the said supreme court of Tennessee in said suit was in favor of the validity of said statute and a decree was rendered against your petitioner, as aforesaid; all of which appears by the record and proceedings in said cause, as aforesaid.

68 Wherefore your petitioner prays the allowance of a writ of error, returnable unto the Supreme Court of the United States, and for citation and supersedeas; and it will ever pray.

DAYTON COAL & IRON COMPANY, LIMITED.
M. H. MAURY, *Gen'l Sup't.*

BURKETT, MILLER & MANSFIELD,
Solicitors for Petitioner.

69 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Tennessee, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Dayton Coal & Iron Company, Limited, plaintiff in error, and T. A. Barton, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, stat-e, or commission, a manifest error hath happened, to the great damage of the said Dayton Coal & Iron Company, Limited, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you

have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Circuit Court of the United States, Eastern District of Tennessee.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2d day of January, in the year of our Lord one thousand nine hundred (1900).

HENRY O. EWING,
Clerk of the United States Circuit Court for the Eastern District of Tennessee, Northern Division,
By R. M. WATKINS,
Deputy Clerk.

Allowed to operate as a supersedeas.

D. L. SNODGRASS,
Chief Justice of the Supreme Court of the State of Tennessee.

70 UNITED STATES OF AMERICA, *ss:*

To T. A. Barton, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, at Knoxville, wherein The Dayton Coal & Iron Company, Limited, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David L. Snodgrass, chief justice of the supreme court of the State of Tennessee, this the 2 day of January, in the year of our Lord 1900.

D. L. SNODGRASS,
Chief Justice of the Supreme Court of the State of Tennessee.

I hereby acknowledge service of the within and foregoing citation and of the writ of error therein mentioned for and on behalf of the defendant in error, T. A. Barton.

This 4 day of January, 1900.

B. G. McKENZIE, *Solicitor.*

71 Know all men by these presents that we, The Dayton Coal & Iron Company, Limited, as principal, and Fred L. Mansfield, as surety, are held and firmly bound unto T. A. Barton in the full and just sum of one thousand dollars ($1,000.00), to be paid to the said T. A. Barton, his certain attorneys, executors, adminis-

rs, or assigns; to which payment, well and truly to be made, we ourselves, our heirs, executors, and administrators, jointly and rally, by these presents.

aled with our seals and dated this the 2nd day of January, in year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court of the State of nessee, at Knoxville, in a suit pending in said court between ton Coal & Iron Company, Limited, and T. A. Barton a final ree was rendered against the said Dayton Coal & Iron Company, ited, and the said Dayton Coal & Iron Company, Limited, hav- obtained the allowance of a writ of error and filed a copy thereof he clerk's office of said court to reverse the decree in the afore- l suit, and a citation directed to the said T. A. Barton, citing and monishing him to be and appear at a Supreme Court of the ited States, at Washington, within thirty days from the date reof:

Now, the condition of the above obligation is such that if the said yton Coal & Iron Company, Limited, shall prosecute said writ of or to effect and answer all damages and cost if it fails to make its a good, then the above obligation to be void; else to remain in l force and virtue.

DAYTON COAL & IRON COMPANY,
LIMITED,
By FRED L. MANSFIELD, *Att'y.*
FRED L. MANSFIELD.

Sealed and delivered in the presence of—
—— ——.

Approved to operate as a supersedeas by—
D. L. SNODGRASS,
Chief Justice of the Supreme Court of the State of Tennessee.

2 *Writ of Error to the Supreme Court of Tennessee.*

In the Supreme Court of the United States.

DAYTON COAL & IRON COMPANY, LIMITED, Plaintiff in Error,
vs.
T. A. BARTON, Defendant in Error.
} In Error.

Assignments of Error.

Comes now The Dayton Coal & Iron Company, Limited, plaintiff in error, by its counsel, and respectfully represents that it feels itself to be aggrieved by the proceedings and decree of the supreme court of the State of Tennessee in the above-entitled cause, and assigns error thereto as follows:

1. The said court erred in ordering, adjudging, and decreeing that the statute of the State of Tennessee, constituting chapter 11 of

the Acts of 1899, under which the defendant in error claimed a money recovery against the plaintiff in error, was not repugnant to the fourteenth amendment of the Constitution of the United States and was in all things valid, and in rendering a decree in favor of the defendant in error and its sureties for the sum of $51.81 and all the cost of the cause.

2. The said court erred, in that the validity of the aforesaid statute of the State of Tennessee, constituting chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in error on the ground that it deprived the plaintiff in error of its liberty and property without due process of law and was repugnant to section 1 of the fourteenth amendment of the Constitution of the United States, the decision of said court was in favor of the validity of said statute, and the aforesaid decree was rendered by said court under the provisions of said statute in favor of the defendant in error and against the plaintiff in error.

3. The said court erred, in that the validity of the aforesaid statute of the State of Tennessee, constituting chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in error on the ground that it abridged the privileges and immunities of the plaintiff in error, a citizen of the United States, and was re-
73 pugnant to section 1 of the fourteenth amendment of the Constitution of the United States, the decision of said court was in favor of said statute, and the aforesaid decree was rendered by said court under the provisions of said statute in favor of the defendant in error and against the plaintiff in error.

Wherefore the said Dayton Coal & Iron Company, Limited, plaintiff in error, prays the honorable court to examine and correct the errors assigned, and for a reversal of the decree of the supreme court of the State of Tennessee entered in the above-entitled cause.

DAYTON COAL & IRON COMPANY,
LIMITED,
By M. H. MAUREY, *Gen. Sup't.*
BURKETT, MILLER & MANSFIELD,
Its Solicitors.

74 Office of the clerk of the supreme court for the eastern division of the State of Tennessee.

I, Alex. McMillan, clerk of said court, do hereby certify that the foregoing is a true, perfect, and complete copy of the transcript and all proceedings had in said court at its September term, 1899, in the case of Dayton Coal & Iron Company, Limited, *vs.* T. A. Barton, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in Knoxville, Tennessee, on this the 27th day of December, 1899.

[Seal of the Supreme Court, Knoxville, Tenn.]

ALEX. McMILLAN, *Clerk.*

STATE OF TENNESSEE:

I, D. L. Snodgrass, chief justice of the supreme court of the State of Tennessee, do hereby certify that the foregoing attestation is in due form and by the proper officer.

Given under my hand this 2 day of January, 1900.

D. L. SNODGRASS,
Chief Justice.

Endorsed on cover: File No., 17,611. Tennessee supreme court. Term No., 187. The Dayton Coal and Iron Company (Limited), plaintiff in error, *vs.* T. A. Barton. Filed January 15, 1900.

No. 26
187
JAN 7 19
JAMES H. McKENNE

By. of Mansfield for P. C.

SUPREME COURT OF THE UNITED STATES.

Filed Jan. 7, 1901.

The Dayton Coal and Iron Co., (Limited)

vs.

T. A. Barton.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

BRIEF FOR PLAINTIFF IN ERROR.

FREDERICK LEE MANSFIELD,
ATTORNEY.

OGDEN BRO'S & CO., PRINTERS, KNOXVILLE, TENN.

Supreme Court of the United States.

The Dayton Coal and Iron Co., (Limited)

vs.

T. A. Barton.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

Brief and Assignments of Error for Plaintiff in Error.

This action originated before a magistrate in Rhea County, Tennessee, and by appeal was taken successively to the Circuit Court of Rhea County, and to the Supreme Court of Tennessee, the latter forum being the Court of highest resort in Tennessee.

The record in this Court presents the sole question of the constitutionality of Chapter 11, House Bill No. 210, of the Acts of the Legislature of Tennessee, passed March 17th, 1899.

This Act is as follows:

"AN ACT requiring all persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay laborers and employees for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employees, laborers, or a *bona fide* holder, and to provide a legal remedy for collecting the same in favor of said laborers, employees and such *bona fide* holder.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or

other evidences of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employee or *bona fide* holder, in lawful money of the United States; *Provided*, The same is presented and redemption demanded of such person, firm, corporation or company using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employees, or if presented and redemption demanded as aforesaid by such laborers, employees, or *bona fide* holder at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidence of indebtedness to such employees, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; *Provided*, further, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"Sec. 2. Be it further enacted, That any employee, laborer or *bona fide* holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in Section 1 of this Act.

"Sec. 3. Be it further enacted, That nothing herein in this Act contained is to be construed as to legalize the issuance or use of scrip. That all laws in conflict with this Act be and the same are hereby repealed.

"Sec. 4. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

"Passed March 17, 1899.

"Signed," Etc.

It was insisted in the State Courts that this Act was unconstitutional, and its validity was drawn in question by the plaintiff in error, on the grounds that it was repugnant to the 14th Amendment to the Constitution of the United States.

It appears from the undisputed facts that the company

is a corporation organized under the laws of the United Kingdom of Great Britain and Ireland, and is engaged in the manufacture of pig iron, the mining of coal and the making of coke, and in the conduct of its business employs a force of about six hundred laborers. The company owns and runs a store, where it sells goods to its employees and such other persons as desire to purchase. The company also has a monthly pay day, which is about the 20th of the month, and settles in cash with its employees on said pay-day. In the meantime, and to such of its employees as see fit to request the same, it issues punchout in denominations of from $1.00 to $5.00. The plaintiff below purchased several of these orders, all of which are similar, except the name of the payee, and the following is a copy of one of said orders:

(FACE.)

25	25	25	25	10	10	10	10	10

April, 1899.

$2.

No. L. C. 15.

Not transferable.

Good for all amounts unpunched.

The storekeeper will supply goods to the amount of this order to Geo. Holston, in account with Dayton Coal & Iron Co., Limited.

G. C. McKENZIE, Cashier.

5	5	5	5	5	5	5	5	5	5

(BACK.)

5	5	5	5	5	5	5	5	5	5

This order is not transferable, and can be used only by the party in whose favor it is made.

25	25	25	25	10	10	10	10	10

It will be seen by this order or punchout that the company gives an order to its storekeeper for goods,

and that this order is in terms not transferable and is for use only by the party in whose favor it is drawn. It thus appears that there is a contract made and entered into by and with the company on the part of the person receiving and accepting the order, and that the order is only redeemable in merchandise in the hands of the original holder. This is an express contract made by the parties. There is no pretense made in the record that there is any discrimination against the holder of the punchout, or that the purchasing power of the order in the company's store is less than an equal amount of lawful money of the United States, nor is there a scintilla of evidence showing that there is any compulsion on the part of the company requiring employees during the month to take out punchout at all or in any amount, or that their positions are imperiled in case they fail to take it out; but it appears from the record that this is done for the mutual benefit of the company and its workmen.

While this case involves only $50.00 it is a test case of much importance and of vital interest to the industrial establishments of the State of Tennessee, and thousands of men employed therein. It is not practical for a concern of this kind to pay weekly, and it is customary for such concerns to pay monthly.

It is a well known fact that many of the employees, and in fact a majority of the employees of mining and furnace companies are poor people, and many of them often shiftless, and it is therefore necessary that some advancements be made them from time to time to supply the men with necessary food and clothing. The class of labor employed by industries of this kind is also by nature roving, if the men were paid off at short intervals the company would oftentimes be deprived of their services, through their desire to wander, and it is

also a matter of considerable labor and expense to keep the time and make out the pay-roll for such a large number of men at frequent intervals, therefore it is to the company's interest to pay monthly, and on the other hand, if the men are supplied with such goods as are necessary for their well-being, it is to their advantage that they are enabled to receive the same, and the company, as a matter of course, makes or expects to make a reasonable profit on the goods, therefore, it is for the mutual benefit of employer and employee.

We earnestly insist that the Act in question is obnoxous to that part of Section 1 of the 14th Amendment to the Constitution of the United States, which says no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law.

Many Acts of this character have been passed in the industrial States, having, as we insist, for their object the political advancement of the author of the Act, and not the welfare particularly of the persons nominally sought to be benefitted. In other words, such Acts are attempts largely to curry favor with the labor vote.

Most of these Acts have failed in the State Courts of their respective States, and we know of no case which has reached this Court, which must be the final arbitrator of such legislation.

The decision of the Supreme Court of Tennessee was in favor of the validity of the Act.

ASSIGNMENTS OF ERROR.

1st. The Supreme Court of Tennessee erred in ordering, adjudging and decreeing that the statutes of the State of Tennessee constituting Chapter 11 of the

Acts of 1899, under which the defendant in error claimed a money recovery against the plaintiff in error, was not repugnant to the 14th amendment to the constitution of the United States, and was in all things valid, and in ordering and decreeing in favor of the defendant in error and against the plaintiff in error, for the sum of $51.81, and all the cost of the cause.

2nd. The State Court erred in that the validity of the aforesaid statute of the State of Tennessee, constituting Chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in error, on the ground that it deprived the plaintiff in error of its liberty and property without due process of law, and was repugnant to Section 1 of the 14th amendment to the constitution of the United States. The decision of the Court was in favor of the validity of said statute, and the aforesaid decree was rendered by said Court, under the provisions of said statute, in favor of the defendant in error and against the plaintiff in error.

3rd. The State Court erred in that the validity of the aforesaid statute of the State of Tennessee, constituting Chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in error, on the ground that it abridged the privileges and immunities of citizens of the United States, and was repugnant to Section 1 of the 14th amendment to the constitution of the United States, the decision of said Court was in favor of said statute, and the aforesaid decree was rendered by said Court, under the provisions of said statute, in favor of the defendant in error and against the plaintiff in error.

BRIEF.

The above assignments of error practically raise the same questions and may be considered as one.

This cause fairly and squarely presents the question

as to whether the Act of the Legislature of Tennessee is obnoxious to said 14th amendment, and therefore void. There is perhaps no question that has involved so much study and discussion as the construction of Section 1 of the 14th amendment to the constitution, and while no case involving this direct question has been passed on by this Court, there are many cases that are instructive and persuasive.

In the case of *Leep vs. St. Louis, Iron Mountain and Southern Railway Co.*, a question was presented as follows: Leep was employed to work for the defendant at a monthly rate, and before the expiration of the month was discharged. On the day of his discharge he demanded his wages at the contract rate, which the company refused to pay then, but agreed to pay at their regular pay-day, and thereupon suit was brought. It appears that the legislature of Arkansas had passed an act in substance providing that on the discharge of any employee working for any company, corporation or person engaged in operating or constructing any railroad or railroad bridge, his wages should then become due on the day of his discharge, and providing for a penalty for their non-payment, and providing that suit might be brought. A very learned discussion of the question is found in this case. It was held that the act in question was unconstitutional, null and void as against natural persons, but was constitutional as against the corporation sued, because it was a corporation, and there was reserved in the charter a power of amendment, and the legislation in question was an exercise of that power.

Leep vs. St. L., I. M. & S. R'y Co., 41 Am. St. Rep., 109.

We call this Court's attention to the fact that there is no power to amend the charter of appellant. The

act does not purport on its face to be an amendment of said charter, and if said act was such amendment, then the act would not apply to laborers employed by individuals and would apply to laborers employed by corporations, and would be void under the constitutional provisions of Tennessee prohibiting class legislation.

It is a well known principle underlying all English and American legislation, secured in the bill of rights and set out in the Declaration of Independence, that all men are created free and equal and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and property, of acquiring and possessing property, and protecting property and reputation, and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; but in order to secure these rights from invasion by caprice, by passion, and by prejudice, it is necessary that there shall be a government of law and not a government of men, and it is necessary that rights and privileges shall be secured to the citizen without abridgement from inconsiderate legislation, oftentimes fastened upon the body politic by designing and unscrupulous politicians, and it was for that purpose that the constitutional provision aforesaid was enacted. It has been said, and truly, that of all the rights of persons the one most essential to human happiness is the right to acquire and possess property, and this right necessarily includes the right to contract, for it is the principal mode of acquisition and is the only way by which a person can rightly acquire property by his own exertion. We concede that the right to contract is not unlimited. Duties to persons, to society, to the government are imposed upon every individual. Every man undertakes to perform these

duties, and necessarily surrenders some rights on account of his relation to others. He submits himself to such restraints and burdens as may conduce to the general comfort, health and prosperity of the State. His enjoyment of his property and his right to contract is subject to the police power of the State. It is subject, where the duties exercised are of a public nature, to regulation by the State within legal and proper limits; as, for instance, the legislature can fix the maximum of charges in public warehouses and for carriage of freight and passengers by common carriers, and it can regulate millers, bakers, innkeepers, because such property, being devoted to the public use, the public has an interest therein. But even that power of legislation is not unlimited. Common carriers and telegraph companies cannot lawfully stipulate for exemption from responsibility for negligence of themselves or their servants. But would any one insist that the State may say a common carrier shall only employ men of a certain height, or weight, or age, or that they should only pay a certain sum as wages? The State is not a paternal institution, regulating the affairs of its citizens as a father regulates the conduct of his child. There must be general principles, and the question is whether the Tennessee act quoted is an infringment of the inalienable right of citizens of the United States to contract.

By examination of every well considered case it will be seen that the power of the legislature imposing conditions on contracts, or limiting the right to contract, or avoiding contracts made, is based in every case on some particular condition, and not on the absolute right to control. It is obvious that the right to contract cannot be limited by arbitrary legislation which rests upon no reason upon which it can be defended, for if it could the right would cease to exist and would become a

license revokable at the will of the legislature, and the Government would become a despotism in theory and probably in fact. Such a power cannot exist, for if it could it would be subversive of the right to enjoy and defend, to acquire and possess property, and to pursue happiness, declared to be inalienable by the Constitution of the United States.

When the subject of contract is purely and exclusively private, unaffected by any public interest or duty to persons or society or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.

The legislature of Missouri made it unlawful for any corporation, person or firm engaged in manufacturing or mining, to issue for the payment of wages any check or other token of indebtedness payable otherwise than in lawful money unless the same is negotiable and redeemable at its face value in cash or in goods, at the option of the holder, at the store or other place of business of the corporation, firm, or person, provided that the order, check, memorandum, person, or other evidence of indebtedness so issued should upon presentation and demand within thirty days from date of delivery thereof be redeemed by the person or corporation issuing the same, in goods at the current cash market price for like goods or lawful money, as may be demanded by the holder. It was held by the Supreme Court of Missouri that the statute was unconstitutional.

State vs. Loomis, 115 Mo., 307.

The Legislature of Texas passed an Act that in the event a railroad company refused, under certain circumstances, to pay the indebtedness to the employee within fifteen days after demand it should be liable, in

addition to the amount due, for 20 per cent. penalty. This Act was held to be unconstitutional because it was confined to railroads; but the Supreme Court of Texas also laid down the doctrine that the relation of railroad companies to their servants, as to acts of employment and payment, was a field in which special legislation had no right to enter.

San Ant. R'y Co. vs. Wilson, 19 S. W. Rep., 910.

It is also laid down in hundreds of cases that the Legislature cannot regulate or restrain the rights of individuals to contract, by making it unlawful for them to agree with each other that wages shall be paid at any specific time subsequent to the day on which the labor by which they are earned be completed, or that the price of property sold shall be paid on a day subsequent to the sale. Such a contract, as to the time of performance, is necessarily harmless and purely and exclusively private concern, and can affect no one except the parties. It is an important means used in the acquisition of property, which sells for more on time than for cash. Labor commands higher wages when payable in the future than it does when paid at the time of performance. A large proportion of the business of the world is transacted on a credit. Nations, states, counties, towns, and persons contract debts payable in the future. The right of persons to sell and labor on a credit is everywhere and by all recognized as legitimate, and is protected by the Constitution in the declaration that the right to acquire and possess property is inalienable.

The Legislature of Illinois, which State has a constitution very similar to that of Tennessee, passed an Act requiring that every manufacturing, mining, quarrying, lumbering, mercantile, street, electric, and elevated railway, steamboat, telegraph, telephone and municipal

corporation, and every incorporated express company and water company, shall pay weekly each and every employee engaged in its business, and providing the penalty for non-payment, and made a violation of the statute a misdemeanor, and furthermore forbidding any of the parties named in the Act from requiring its employees to accept wages at other periods. One McGrew entered into a contract with the Braceville Coal Co., in which it was stipulated that he should be paid only on the regular pay-day, which should be the first Saturday after the 10th day of each month. He entered the company's employment November 3rd, and quit before pay-day and demanded his wages, and the company was indicted for a violation of the statute. Held that the statute was unconstitutional.

Braceville Coal Co. vs. People, 37 Am. St. Rep. 306.

Said the Supreme Court of Illinois: "Property in its broader sense is not the physical thing which may be the subject of ownership, but is the right of dominion, possession, and the power of disposition, which may be acquired every day, and the right of property preserved by the constitution is the right not only to possess and enjoy it, but the right to acquire it in any lawful mode or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed him, chooses to adopt. Labor is the primary foundation of all wealth. The property which each one has in his own labor is a common heritage, and, as an incident to the right to acquire other property, the liberty to enter into other contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guaranty."

In Frorer vs. People, 141 Ill., 171, the Supreme Court of Illinois says: "The privilege of contracting

is both a liberty and a property right, and if A is denied the right to contract and acquire property in the manner which he has hitherto enjoyed under the law, and which B, C and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract."

It is undoubtedly true that the people, in their respective capacity, may, by a general law, render that unlawful which, in many cases, had hitherto been lawful, but laws depriving particular persons or classes of persons of rights enjoyed by the community at large to be valid must be passed upon some existing distinction or reason not applicable to others not included within its provisions.

Cooley's Constitutional Limitations, 391.

The legislature of West Virginia passed an act providing that all persons, firms, corporations, or associations engaged in mining coal, ore or other minerals, or mining and manufacturing them or either of them, or manufacturing iron or steel, or both, or any other kind of manufacturing, shall pay their employees as provided in the Act—that is to say, it was rendered unlawful for them to issue for the payment of labor any order or other paper whatsoever unless the same purports to be redeemable for its face value in lawful money of the United States, bearing interest at the legal rate, and made payable to the employee or bearer and redeemable within the period of thirty days, providing that a violation of the Act was a misdemeanor and fixing the penalty. One Goodwell was indicted for a violation of the Act, and the Act was held to be unconstitutional by the Supreme Court of West Virginia in the case of the State vs Goodwell, 25 Amer. St. Rep. 863, which is one of the leading cases of this

kind in the United States, and the question in the case was by the Supreme Court of West Virginia said to be whether under the 14th amendment to the constitution of the United States the legislature could limit or forbid the right to contract between parties not under mental, corporeal, or other disability, when the subject of the contract is lawful, not public in its character, and the exercise of it is purely private and personal to the parties themselves. It was further held that liberty as used in the Constitution,is not dwarfed into mere freedom from physical restraint or incarceration, but is deemed to embrace the right to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to the restraint necessary for the common welfare. "Liberty," said the Court, "in its broad sense, means the right not only to use our freedom from servitude, imprisonment, or restraint, but the right to use our faculties in all lawful ways, to live and work where we please, to earn our livelihood in any lawful calling, to pursue any lawful trade or vocation" * * * * "The right of every individual must stand or fall by the same rules of law that govern every other member of the body politic under similar circumstances, and every partial or private law which directly proposes to destroy or affect individual rights, or does the same thing by restricting the privileges of certain classes of citizens, and not of others, when there is no public necessity for such discrimination, is unconstitutional and void. Were it otherwise, odious individuals or corporate bodies would be governed by one law, and the mass of the community, and those who make the law, by another." Nor is this principle changed, as we insist, by the fact that the Tennessee law purports to apply to all persons employing labor. Labor is an asset and property that is purchased, and the law that

compels the employer of labor to pay only money for labor is a discrimination in favor of the person that buys other property and pays for it in other ways than by money.

The vocation of the employer, as well as that of his employee, is his property. Depriving the owner of property, or one of its attributes, is depriving him of his property under the provisions of the constitution.

People vs. Otis, 90 N. Y., 48.

The right to use, buy and sell property and contract in respect thereto, including contracts for labor, which is, as we have seen, property, is protected by the constitution. If the legislature, without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to the lawful trade or business, then it may prevent the prosecution of all trade and regulate all contracts.

State vs. Goodwell, 25 Am. St. Rep., 867.

And in the same case the Supreme Court of West Virginia said that while corporations engaged in occupations in which the public had an interest or use might within certain well-defined limits be regulated, as for instance, regulating the charges of railroad and telegraph companies, yet they knew of no well-considered case in which a statue has been upheld that undertook to regulate the dealings between employer and employees, even in this class of occupations, much less in cases that are not impressed with public trust or duty.

The claim is made that this class of legislation is sustainable in the exercise of the police power which every sovereign State possesses. That power is very broad and comprehensive, and is exercised to promote the health, safety and welfare of society. Its limits cannot be defined accurately. No Court, as far as we

can ascertain, has been willing to attempt definitely to circumscribe it. But this power, though broad and extensive, is not above the Constitution, and if the Legislature passes an Act ostensibly for the public health, safety, or welfare, and thereby destroys or takes away the property of a citizen and interferes with his rights or personal liberty, then it is for the Court to decide whether it is a proper and reasonable exercise of the power, and if it is not, to declare it void.

Such legislation as the legislation in question partakes of the nature of despotism. The Supreme Court of New York, *in re* Jacobs, 98 N. Y., 114, 50 Am. Rep., 636, said: "Such legislation may invade one class of rights to-day and another to-morrow, and if it can be sanctioned under the Constitution, while far removed in time, we shall not be far away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sowing of seed, and the reaping of grain, and governmental ordinances regulated the movements and labor of artisans, the rate of wages, the price of food, the diet and clothing of the people and a large range of other affairs long since, in all civilized lands, regarded as outside of governmental functions. Such governmental interference disturbed the finer adjustments of the social fabric and usually deranged the delicate and complicated machinery and caused a score of evils while attempting the removal of one."

The legislation declared unconstitutional in the New York case just cited was an act for the alleged purpose of improving the public health, and prohibiting the manufacture of cigars and preparation of tobacco in any form in tenement-houses. This cause contains some very useful and pertinent discussion of the con-

stitutional provisions now under discussion, a few of which we cite:

"The third absolute right inherent in every Englishman is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions without any control or dominion save only by the law of the land." * * * "There may be such serious interruptions to the common and necessary use of property as will be equivalent to a taking within the meaning of the Constitution. When the law annihilates the value of property and strips it of its attributes, by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation, and certainly within the constitutional provisions intended expressly to shield personal rights from the exercise of arbit ary powers." * * * "All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specific locality or exclude him from his own house, or restrain his otherwise lawful movements, except as such laws may be passed in the exercise, by the Legislature, of the police power, which will be noticed later, are infringements on his fundamental rights of liberty, which, under the Constitution, are protected." Speaking of police power, the Court said: "The limit to the exercise of the police power can only be this: The Legislature must have reference to the comfort, or safety, or welfare of society. It must not be in conflict with the provisions of the Constitution." "Law will not allow the rights of property to be invaded under the guise of police regulation for the promotion of health, when it is manifest that such is not the object and purpose of the regulation." * * * "All sorts of restrictions and burdens are imposed under the police power, and when these

are not in conflict with any constitutional prohibition of fundamental principles they cannot be successfully assailed in a judicial tribunal, but, under the pretense of prescribing a police regulation, the State cannot be permitted to encroach upon any of the just rights of the citizen, which the Constitution intended to be secure against abridgement."

In the case of the State vs. Fire Creek Coal & Coke Co., 33 W. Va., 188, found in American State Reports, 891, a West Virginia Act was declared unconstitutional which declared it unlawful for any person, firm or corporation engaged in mining or manufacturing, and interested in merchandising, to knowingly sell to any employee merchandise at a greater per cent. of profit than when selling to other customers buying like quantities for cash. This was decided to be an unjust interference with the rights, privileges and property of both employer and employee. It was held that the remedy was in the hands of the employee; that he is not compelled to buy from his employer, and if he does it is an injust interference of the rights of both, and places upon both a badge of slavery by denying to one the right to manage his own private business, and assuming that the other has so little capacity and manhood as to be unable to protect himself or manage his own private affairs. Said the Supreme Court of West Virginia: "The statute is a procrustean bed. It consigns all ages and conditions to the same measure of treatment, regardless of their differences. It excludes all freedom in trade and all considerations of mutual benefit, and even charity. If the employer sells goods to the family of some friend in indigent circumstances at less than cost, then, under the statute, he must sell at the same price to all of his employees; but it is unnecessary to illustrate the vices, the crudities and the

injustice of the statute. That it is an attempt to do for private citizens, under no physical or moral disabilities, what they can best do for themselves, is apparent. It selects miners and manufacturers as a class and denies to them privileges which are not only proper and legitimate in themselves, but also to some extent necessary and unavoidable in the conduct of business, privileges which concern private affairs solely, and which are enjoyed by all other classes of citizens. It is an attempt on the part of the Legislature to do what in this country cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The Act is an infringment alike of the rights of the employer and the employee. More than this, it is an insulting attempt to put the laborer under legislative tutelage, which is not only degrading to his manhood, but subversive to his rights as a citizen of the United States.

To the same effect see Godcharles vs. Widesman, 113 Pa. St. Rep., 431.

The legislature of Massachusetts passed an Act providing that no employer should impose a fine upon or withhold the wages or any part of the wages of an employee engaged at weaving, for imperfections that may arise during the process of weaving, and providing for the imposition of a fine for the violation of the statute. It was held by the Supreme Court of Massachusetts, in the case of Commonwealth vs. Perry, 31 Am. St. Rep., that notwithstanding the fact that said Act did not preclude the employer from bringing a suit for damages against the employee, the statute was unconstitutional, null and void. Said the Supreme Court of Massachusetts: "The right to employ weavers and to make proper contracts with them is therefore protected by our Constitution, and the statute which for-

bids the making of such contracts, or attempts to nullify them or impair the obligation of them, violates the fundamental principles of rights which are expressly recognized in our Constitution." It was held in that case that the statute was a violation of both the Federal and State constitutions.

The legislature of New York passed an Act in substance making it a misdemeanor to sell or dispose of anything other than what is specifically stated to be the subject of sale or exchange, is to be delivered or received, or in any way connected with it as a part of the transaction, as a gift, prize, premium or reward to the purchaser. A tea company in the transaction of its customary business, offered some crockery and glassware as a gift in connection with the sale of a certain amount of merchandise, and in passing upon the case it was held by the New York Court of Appeals that the act was unconstitutional, null, and void.

People vs. Gillman, 4 Am. St. Rep., 465.

In the above case the holding was that the statute was void under a clause of the constitution of New York almost similar to the clause of the Federal Constitution herein mentioned, and identical in meaning; and it was held that the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or vocation, is protected by the constitution of the fundamental principles of our judicature. In that case the New York Court said that this legislation was of a kind becoming very frequent of late, and was meant to protect some class in a community against the fair, full, and free competition of some other class, some members of the former class thinking it impossible to hold their own against such competition. Now, it is evident that the Tennessee act was

aimed at corporations engaged in large mining and manufacturing pursuits, and not at the farmer employing one or two laborers, but the sweeping provision was placed in the act to protect it from the ban of class legislation, and while an act is construed by its four corners, and the motive and policy of the legislature cannot be criticised, yet the purpose of the act—that is, its real purpose—can be looked to in determining whether or not the act is a legitimate exercise of the police power. Now, under the Tennessee statute the employer is prohibited from contracting with his employee as to the mode and manner of payment. The employee is likewise prohibited from contracting with his employer as to manner and mode of payment. If the necessities of life compel the laborer to have an advance upon his wages, the employer is prohibited from making a contract regarding such advance, notwithstanding that the contract is advantageous to both parties.

In the New York case it was held that the statute prohibited a man owning articles of food to sell or dispose of them in such manner as he deemed fit. He was selling a lawful article, a necessary of life; his manner of sale, while it reduced the profits on the particular sale, was by him deemed to increase the volume and amount of his trade and in the end increase his profits; the purchaser was pleased at the prospects of getting a bonus in his purchase; neither party was engaged in a business intrinsically or inherently unlawful or immoral. The statute was nothing else than an invasion of the liberty of the person—such invasion of the liberty of the person as our forefathers went to war to protest against, and to prevent which nations have spent millions of blood and treasure. There is no more difference in the principle of the two statutes—that is the

New York and the Tennessee statutes—as far as the principle goes and the liberties are concerned, than there was in the acts of the British government that resulted in the revolution and its invasion of our liberty.

The fact that the laborer can or cannot work the entire month without receiving an advance on his wages does not alter the case. His fundamental and valuable rights are invaded, weakened, limited, and destroyed by the legislation under consideration.

The New York Court of Appeals in the last above cited case, discussing police power, says that it is true that generally it is for the legislature to determine what laws and regulations are needed to protect the public health and conserve the public comfort and safety, but these measures must have some relation to the ends: "The Court must be able to see upon a perusal of the enactment that there is some just and reasonable connection between it and the ends above mentioned, and that, unless such relation exists, the enactment cannot be upheld as an exercise of the police power."

To follow this reasoning further, a laborer in Tennessee, working for his employer, accepts an order on the store and is charged on the books of the company with the amount of the order. At pay-day the company owes him only the balance due on his wages after the order is charged. Yet this act says that notwithstanding he agreed to take so much of his wages voluntarily in goods, and notwithstanding the fact that the purchasing power of his order is equal to an equivalent in cash, and notwithstanding that the laborer has traded his order to some other person, perhaps a rival merchant for goods, that the company issuing the order is bound to redeem it in cash, in plain violation of a specific contract made between parties *sui juris*, under

no legal disability and presumably in every way capable of taking care of themselves.

The Pennsylvania courts have given statutes of this class much attention, and as much as Pennsylvania has more laborers than any other State in the Union, constituting a large voting class, whose alleged interests the political legislator is anxious to protect, many of these acts have been passed. One was declared unconstitutional in the case of Godcharles vs. Widesman, 113 Penn., 431. In that case an act was passed declaring void all orders given by employers engaged in the business of manufacturing to their workmen, payable in goods. The Supreme Court of Pennsylvania said, speaking of certain sections of the act, being the sections above referred to, "They are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do what in this country cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringment alike upon the rights of employer and employee. The employee may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal; and every law that undertakes to prevent him from so doing is an infringment upon his constitutional privileges, and therefore vicious and void."

Another Pennsylvania Act required monthly payment of wages, and was declared unconstitutional inasmuch as it amounted to making a contract between the parties against their will, and it was held that the Act could not mature the payment of wages before the time agreed upon by the parties.

Bauer vs. Reynolds, 3 Penn. Dist. Rep., 502.

Another Pennsylvania Act, which provided that the wages of miners should be paid in lawful money of

the United States, was held unconstitutional, so far as it attempted to preclude miners from making valid contracts to accept other than money in payment of their wages.

Showalter vs. Ehlan, 5 Pa. Sup. Ct., 242.

A Missouri Act was declared unconstitutional by the Supreme Court of Missouri, which provided that it should be unlawful for any person, firm or corporation engaged in manufacturing or mining to pay out or circulate for the payment of wages of any laborer any order, check, or memorandum, unless the same was payable in lawful money of the United States.

The principle underlying the case at bar was enunciated and approved by the Supreme Court of Tennessee in the case of Bank vs. Vivine Grocery Co., 13 Pick., 609, in treating of the unconstitutionality of Chapter 129 of the Acts of 1895, the effect of the second section of the Act being to prevent any person being in debt from selling or disposing of his property except for cash, and providing a remedy in case of violation of the Act. Said the Supreme Court of Tennessee: "It is, and correctly, insisted that while this act does not deprive him directly of his property, it takes away from him that element of its value which consists in the right to use and legitimately dispose of it, and here it must not be forgotten that we are not dealing with the question of the insolvent debtor conveying his property, or any part of it, or of the solvent debtor conveying his property, or any part of it, for the purpose of hindering, delaying or defeating creditors, for the Act does not stop with the declaration that such disposition, if made for the purpose of preferring one or more creditors, shall be void, but adds that where it has that effect it shall be void, and as any transfer of any part of the property of the debtor, however

solvent, to a creditor—a preference to that extent, it is manifest that this is a limitation upon the right for a proper purpose by a solvent debtor to convey any part of his property at all, if in so doing he shall satisfy any of his debts. It was decided in the case of Stratton Claimants vs. Norris Claimants, 89 Tenn. Rep., 497, that when the Constitution of the State of Tennessee was formed, the right to own and hold, to enjoy, to alien, to devise, and to transmit property by inheritance was enjoyed to the fullest extent and perfection of absolute right, and one of the objects of the Constitution was to protect and preserve this right. To take from property its chief element of value, and to deny to the citizen the right to use and transmit it in any proper and legitimate method, is as much depriving him of his property as if the property itself were taken.

In the case of Butcher's Union vs. Crescent City, Ill., U. S., 746, the Supreme Court dealt extensively with the question of what legislation properly came within the proper definition of police power, a term very broad and that has covered more sins than the mantle of charity. Justice Field said: "The common business and callings of life, the ordinary trades and pursuits which are inocuous within themselves and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them without let or hinderance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The

patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper without injury to his neighbor, is a plain violation of his most sacred property. It is a manifest encroachment both upon the just liberty of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the other from employing whom they think proper."

The fact that appellant is an alien corporation does not alter the case or make any different rule from what it would be if it were a domestic corporation.

Yick Wo vs. Hopkins, 118 U. S., 356.

The case just cited involved the constitutionality of an ordinance of the city and county of San Francisco, providing that it could be unlawful for any person to engage in the laundry business within the corporate limits without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone. This Act was passed under the guise of regulation for the purpose of preventing Chinamen from carrying on the laundry business in the city of San Francisco, though the Act on its face indicated no such purpose. The Supreme Court of the United States, in a well considered case, held the ordinance void, because it was within the prohibition of the Fourteenth Amendment to the Constitution of the United States.

This ordinance did not state that the privilege should be granted to citizens and withheld from Chinese; on its face it appeared to be simply a regulation of the business under the police power, and required, as a condition precedent to carrying on the business, a permit from the city commissioners. The ordinance was held

void as obnoxious to the constitutional provision above mentioned. Said the Supreme Court of the United States: "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constraind to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is of course not subject to law, for it is the author and the source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts, and the law is the definition and the limitation of power. It is, indeed quite true that there must always be lodged somewhere and in some person or somebody the authority of final decision, and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of public government, exercised either in the pressure of opinion or by means of the suffrage; but the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race, in securing to man the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts bill of rights, the government of the Commonwealth may be a government of laws and not of men, for the very idea that one man may be compelled to hold his life or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable, and in a country where freedom prevails as being the essence of slavery itself.

A statute prohibiting the manufacture or sale of food of any substitute for butter or cheese produced from pure, unadulterated cream of milk, is unconstitutional.

People vs. Marks, 52 Am. Rep., 34, a N. Y. case.

Counsel for defendant in error in the State Court relied with much confidence on the case of Holden vs. Hardy, 169 U. S., 366. After a careful examination of this case we see nothing in it in conflict with the insistence that the Tennessee statute is unconstitutional. The Utah statute passed on in the Holden case regulated the hours of laborers in underground mines, and was sustained as a valid exercise of the police power of the State. This Court, however, intimated that an Act regulating the hours of all labor to eight hours per day would have been unconstitutional. It is not within the power of the Legislature to prevent persons who are *sui juris* and otherwise perfectly competent to contract, from entering into employment, and voluntarily making contracts in relation thereto. The character of the work to be performed, the number of hours per day which the employee shall work, and the amount and kind of compensation to be paid therefor are purely and necessarily personal matters between the parties to the contract, and are regulated by the terms thereof and by the will of the employer, influenced by considerations as to the requirements of his business and the condition of the market for his products, and it is clear that so long as the employment does not interfere with the rights and health of others, the Legislature cannot prevent it or regulate any of its terms. There is no public necessity requiring that laborers shall receive their compensation in cash that can be the subject of the police power of the State. The Act in the case at bar does not pretend to regulate the public health or to regulate the public morals. It is simply

a wave of the populistic doctrines that have recently swept over the South and West, and while the Act is apparently fair on its face, and covers all classes of labor, it is manifest that the Act was aimed at industrial corporations that employ large bodies of men, and was not aimed at the farmer who pays his laborers in orders on the store.

So the California enactment in the *Yick Wo* case was fair on its face and made no discrimination against the Chinese and in favor of the white man, yet the Act was in fact a discrimination, and was held to be unconstitutional.

An enactment of the Legislature, made in pursuance of the police power of the State or a police regulation, must be for the purpose of enforcing a duty and to punish acts or omissions which may be right or wrong, according to the time, place and manner of doing them, that is the exercise of what would otherwise be right, at the time, place and manner, becomes an injury to the public, is prohibited.

"It is apparant that if the police power extends to matter affecting contract relations, and in which the public health or public morals is in no way concered, there is practically no limit to this exercise, and all business conducted in the States, whether of a quasi-public, public, or strictly private nature, could be made subject to such laws regulative thereof as the Legislatures of the respective States might see fit to adopt, and the personal liberties of citizens secured to him by the constitution of the United States would be entirely subverted."

"Among the privileges and immunities secured to the citizen by the 14th amendment is the right "to pursue unmolested a lawful employment in a lawful manner.'"

Incidental to this there is, of course, the further right to enter into contracts relating to the character of the service to be performed, the amount of compensation to be paid and received therefor, and the period of time or the number of hours per day required to perform such labor.

In the case of private employment of labor, employers are entitled to employ as many workmen, and of whatever degree of skill and at whatever price they think fit, and to pay them in such manner as they deem proper and the laborer is willing to accept, except possibly in some special cases, as children or orphans, and we know of no case that has gone to the extent of regulating the price that employers should pay for labor, or the manner of their payment, even though the law has gone to a large extent towards holding that the States have a right in certain cases of injurious employment to regulate the hours and methods of labor, and provisions for the safety of the laborer, but we know of no case holding that the laborer can not contract for the amount and kind of his compensation. Such an Act is paternal beyond any case we have yet seen.

We turn to some of the authorities supporting our present contention, from which it will be seen that, while the Courts do not attempt specifically and in detail to enumerate and define all these privileges and immunities, they are practically unanimous in holding that the right to pursue, in a lawful manner, a lawful vocation or trade, unmolested by laws in any way restrictive of that right, is a privilege that is protected and secured to the citizen by the Constitution of the United States.

Ward vs. Maryland, 79 U. S., 12 Wall., 430. (20: 453.)

Slaughter-House cases, 83 U. S., 16 Wall., 97. (21: 415.)

It is said in the dissenting opinion of Justice Field in the latter case: "The privileges and immunities designated are those which of right belong to the citizens of all free governments. Clearly among these must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as equally affects all persons."

Butchers' Union S. H. & L. S. L. Co. vs. Crescent City L. S. L. & S. H. Co., 111 U. S. 746 (28:585); 1 Adam Smith, Wealth of Nations, Chapt. 10.

The right to follow any of the ordinary callings of life is one of the privileges of a citizen of the United States.

Ex parte Kuback, 85 Cal. 274, 9 L. R. A. 482.

A city cannot be justified in making it a misdemeanor for any of its citizens to contract with another for services to be rendered because the contract is that he shall work more than a limited number of hours per day.

Ex parte Kuback, 85 Cal. 274, 9 L. R. A. 482.

It is not competent for the legislature to single out the mining, manufacturing and smelting industries of the State and impose upon them restrictions with reference to the hours of their employment from which other employers of labor are exempt.

Re Eight Hour Bill, 21 Colo. 29.

The right of parties to make their own contracts is a right guaranteed by our Bill of Rights and protected by the 14th Amendment to the Constitution of the United States.

Low vs. Rees Printing Co., 41 Neb. 127, 24 L. R. A. 702.
Re House Bill, No. 203, 21 Colo. 27.
Frorer vs. People, 141 Ill., 171, 16 L. R. A. 492.

When the subject of contract is purely and ex-

clusively private, unaffected by any public interest or duty to person, society or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.

Leep vs. St Louis, I. M. & S. R. Co. 58 Ark. 407, 446, 23. L. R. A. 621; Wally vs. Kennedy, 2 Yerg., 554, 24 Am. Dec., 511; Godcharles vs. Wigeman, 113 Pa., 431; Com. vs. Perry, 155 Mass., 117, 14 L. R. A,, 325; Re Jacobs, 98 N. Y., 98, 50. Am. Rep., 636; People vs. Marx, 99 N. Y., 377, 52 Am. Rep., 34: People vs. Gillson 109 N. Y., 389; Millett vs. People, 117, 111, 294, 57 Am. Rep., 869; Shaver vs. Pennsylvania Co., 71 Fed. Rep., 931, 936.

The right to labor is, of all others, after the right to live, the fundamental, inalienable right of man of which he cannot be deprived under the guise of law, or otherwise, except by usurpation or force.

Re Tiburcio Parrott, 1 Fed. Rep., 481.

This statute is also violative of the provisions of the 14th Amendment that no State shall deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

What we have already said is sufficient to show that under the operation of the law all other persons in the state, no matter in what business or occupation they may be engaged, are left entirely at liberty to make whatever contracts they please in respect to the character of the work to be performed, the amount to be paid therefor, and the number of hours that shall constitute a day's work in all occupations which by the law of the land are properly the subject of contract.

The due process of law of which plaintiff claims to have been deprived is the arbitrary violation of the con-

tract made between the plaintiff in error and its laborers. And the arbitrary deprivation by the legislature of its right to make a valid contract with its laborers as to the kind of compensation to be received by them.

Blackstone, in his classification of fundamental rights, says: "The third absolute right inherent in every Englishman is that of property, which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land."

1 Bl. Com. 138.
Pumpelly vs. Green, Bay & M. Canal Co., 80 U. S., 13 Wall., 166, 177 (20: 557, 560.)
Wynehamer vs. People, 13 N. Y., 378, 398.

All laws, therefore, which impair or tramel these rights which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements, are infringments upon the fundamental rights of liberty, which are under constitutional protection.

People, Manhattan Sav. Inst. vs. Otis, 90 N. Y., 48.
Re Jacobs, 98 N. Y., 98, 50 Am. Rep., 636.
Bertholf vs. O'Riley, 74 N. Y., 509, 515, 30 Am. Rep., 323.
Low vs. Rees Printing Co., 41 Neb. 127, 24 L. R. A. 702.
Nichols vs. Walter, 37 Minn., 264.
State Randolph vs. Wood, 49 N. J., L. 88.
Ritchie vs. People, 155 Ill., 98, 29 L. R. A., 79.

The manner in which the law discriminates against one class of employers and employees and in favor of all others, places it in opposition to the guaranties hereinbefore discussed, and renders it invalid.

Ritchie vs. People, 155 Ill., 98, 29 L. R. A., 79.
Frorer vs. People, 141, Ill., 171, 16 L. R. A., 492.

The privilege of contracting is both a liberty and a property right, and if A is denied the right to contract

and acquire property in a manner which he has hitherto enjoyed under the law, and which B, C & D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract.

Frorer vs. People 141, Ill., 171, 16 L. R. A., 492.
Ramsey vs. People, 142 Ill., 380, 17 L. R. A., 853.
Braceville Coal Co. vs. People, 147 Ill., 66, 22, L. R. A., 340.
State vs. Loomis, 115 Mo., 307, 21 L. R. A., 789.
Austin vs. Murray, 16 Pick. 121.

"The law of the land" does not mean the Acts of Legislatures which deprive the citizen of his rights, privileges or property, but it means a valid Act, and the spirit of the constitution means that there must be some limitations on the part of the Legislature. Magna Charter relieved the British subject from the tyranny of the king, and remitted him to the despotism of parliament; the Constitution of the United States, under the 14th Amendment, relieves every person of the uncontrolled despotism of the Legislature.

The cause or occasion for depriving a citizen of his supposed rights must be found in the law as it is, or at least it can not be created by a legislative act which aims at their destruction, where the rights of property are admitted to exist, the Legislature cannot say they shall exist no longer, nor will it make any difference although a process and tribunal are appointed to execute the sentence. If this is the law of the land, and due process of law within the meaning of the constitution, then the Legislature is omnipotent. It may enter or assume entire possession, and take away liberty and life without a pre-existing cause, appointing judicial and executive agencies to execute its will, for property is placed by the constitution in the same catagory with liberty and life."

Wynehamer vs. The People, 13 N. Y., 378.

The power assumed by the Tennessee Legislature can only be justified by extending the term "police power" to include such a statute. We have been unable to find any precise definition of this term, and an understanding thereof can only be arrived at by a process of inclusion and exclusion. We find that statutes have been upheld on the ground that they were essential to the public safety, health and morals, ordering destruction of property that endangered the lives of passers by, and authorizing the demolition of such as are in the path of fires, prohibiting the slaughter of diseased cattle, or the sale of decayed and unwholesome food, the erection of wooden buildings, the regulation of railroads and means of public conveyance, the regulation of interments in burial grounds, the restriction of objectionable trades, forcible vaccination, the confinement of the insane or those afflicted with loathesome diseases, restriction of beggars, vagrants, and drunkards, suppression of obscene publications and houses of ill fame, the prohibition of gambling houses, the regulation of hours of labor by children, and in places where the labor was particularly unhealthy, all of which is justified by the public necessity and public welfare, but we know of no case that undertakes to make trades and contracts for people who are *sui juris*, and that undertakes to regulate the internal affairs of every employer of labor. Such a policy partakes of despotism and renders the State odious.

It may be that this particular Act is popular, but the principle involved in sustaining the same is the "rift within the lute" that will spread far beyond its original purpose, and place every industrial institution at the mercy of the Legislature.

The comity existing between Courts and Legislatures requires parliamentary language, and the Legis-

lature is presumed to act honestly and from proper motives, neverthless it is well known that members of State Legislatures are frequently illy qualified to perform their duties, and great injustice is often attempted to be done the industries of the country by legislators who are either swept away by popular sentiment or by motives that are not creditable, and it often happens that the only refuge is this Court and the 14th amendment.

We insist that the plaintiff in error has the right, if it desires, to sell its goods for labor, and the laborer has the right to sell his labor for merchandise. It is going a long distance from the basis line of our institutions to hold that a contract not unlawful, not immoral, concerning no public purpose, cannot be made between two parties who are *sui juris* and in the full possession of their faculties. If this act can be sustained, one can be sustained to the effect that the laborer shall be paid only in cash at the end of each day's employment, that they shall only work so many hours per day, and not only this, but the inevitable outgrowth will be an attempt to regulate their wages and compensation.

The record shows that the plaintiff in error is a foreign corporation, that it has complied with all the legal regulations of Tennessee authorizing it to have a domicile and do business in Tennessee, and it is a person that is entitled to the equal protection of the law. A law may be equal and yet arbitrary and grossly unjust. A law prescribing that no class of workmen should work more than a fixed number of hours per day, and demand more than a fixed compensation, would be equal, yet such a law would deprive these persons of a certain form of liberty, and of the freedom of contract. If this is true, why is it not true that a statute which says that an employer shall pay in cash his laborers

when the laborer has agreed and contracted to take merchandise not equally unconstitutional.

The right of personal security, the right of personal liberty, and the right to protect property, are three fundamental rights of all persons in the United States. Says Mr. Justice Swayne: "Life is the gift of God, and the right to preserve it is the most sacred of the rights of man. Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is every thing which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and, as such, merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property."

16 Wall, 127.

The police power only extends to the necessary regulations of the pursuits of man, so that they shall not become in their mode of exercise, unhealthy, noisome, dangerous or otherwise detrimental or injurious to the common interests of the community. It cannot be carried to the extent that some change in dealing may be more profitable, or better calculated to enhance the wealth of the community, and is therefore valid. It cannot be insisted that the use of this punch-out is detrimental or injurious to the common interests of the people of Tennessee, and it makes no difference whether its abolition is beneficial or injurious. It does not come within the definition of the police power.

There are some rights, in every free government, beyond the constitution of the State.

"A government which recognized no such rights, which held the lives, the liberty and property of its

citizens subject at all times to the absolute despotism and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

The theory of our government, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name No Court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other, should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B."

Savings & Loan Assn. vs. Popeka, 20 Wall, 461.

With these remarks we submit these matters to the determination of this Court.

Respectfully submitted,

FREDERICK LEE MANSFIELD,

Attorney.

No. 184. 26.

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The Dayton Coal and Iron Co., (Limited)

vs.

T. A. Barton.

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IN ERROR TO THE SUPREME COURT OF TENNESSEE.

BRIEF FOR DEFENDANT IN ERROR.

BENJ. GORDEN McKENZIE,
Attorney.

Supreme Court of the United States.

The Dayton Coal and Iron Co., (Limited)

VS.

T. A. Barton.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

BRIEF AND REPLY FOR THE DEFENDANT IN ERROR.

This cause originated before a magistrate for Rhea County, Tennessee, being a suit under Chapter 11, Acts of the Tennessee Legislature, 1899, to recover the cash on Fifty Dollars ($50) in puncnout or scrip issued by plaintiff in error and of which defendant was and is the bona fide holder and owner, which was issued after the passage of said Act. Defendant was successful in the courts below, including the Supreme Court of Tennessee, and plaintiff in error brought this cause to this Honorable Court, etc.

The only contention of plaintiff in error is that said Act is unconstitutional, because repugnant to Section 1 of the 14th Amendment to the Constitution of the United States. Said Section reads as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

"Due process of law," and the law of the land mean one and the same thing.

Davidson vs. New Orleans, 96 U. S., 101.

Then it necessarily follows, if this Act is Constitutional, that is the law of the land and by it within proper and reasonable limits business and property rights can be regulated.

Holden vs. Hardy, 169, U. S., 392.

The Act in question reads as follows:

"AN ACT requiring all persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay laborers and employees for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employees, laborers, or a *bona fide* holder, and to provide a legal remedy for collecting the same in favor of said laborers, employees and such *bona fide* holder.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employees, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employee or *bona fide* holder, in lawful money of the United States; *Provided*, The same is presented and redemption demanded of such person, firm, corporation or company using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employees, or if presented and redemption demanded as aforesaid by such laborers, employees, or *bona fide* holder at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidence of indebtedness to such employees, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; *Provided*, further, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"Sec. 2. Be it further enacted, That any employee, laborers or *bona fide* holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid, for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in Section 1 of this Act.

Sec. 3. Be it further enacted, That nothing herein in this Act contained is to be construed as to legalize the issuance or use of scrip. That all laws in conflict with this Act be and the same are hereby repealed.

"Sec. 4. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

"Passed March 17, 1899.

"Signed," etc

Approved by the Governor March 23, 1899.

The authorities cited and relied on by plaintiff in error are cases chiefly

where the Acts in question were declared unconstitutional on account of arbitrary class legislation, and the others are entitled to little or no weight in this Honorable Court since the case of Holden vs. Hardy, reported in 169, U S. 392 In that case the Supreme Court of the United States held that a Statute of Utah, making eight hours labor constitute a day's work, a proper exorcise of the police power of the State and hence constitutional.

See also Common Wealth vs. Alger, 7 Cush. 53.84.

The Act in question is general in its application and hence no objection can be brought for class legislation, as it applies to every person, natural or artificial. Such laws have been repeatedly upheld as a proper exercise of the the police power of the State. In Tennessee an Act regulating fire insurance contracts and making the three-fourths value clause void was upheld as proper and constitutional.

95 Tenn 245, case Dugger vs. Insurance Co.

Also Tennessee Supreme Court held that an ordinance, prohibiting the erection of wooden buildings within certain fire limits, was not, in a constitutional sense, an impairment of a contract for erection of the same, although the contract was made before the passage of the ordinance.

Knoxville vs. Bird, 12 Lea 121-4.

Also the same Court held in Truss vs. State that a law prohibiting the sale of cotton within certain hours was constitutional and a proper exercise of the police power of the State.

97 Tenn . 311.

A West Virginia Statute similar to the Statute in question in many particulars was sustained and upheld by the Supreme Court of that State.

Peel Splint Coal Co. vs. West Virginia, 17 L. R. A. 385

An Act of the State of Indiana requiring bi-weekly payments of wages, was upheld as proper by the Supreme Court of that State.

Hancock vs. Yaden, 6. L. R. A , 576.

The Supreme Courts of Massachusetts, Rhode Island, Kentucky and many other States have sustained similar and even more drastic laws for the regulation of business and contracts growing out of same.

State vs. Manufacturing Co., 17 L. R. A., 856; Shaffer vs. Manufacturing Co., 55 Md., 28 L. R. A., 344.

The evils of the scrip system has long been felt and it has become a tool in the hands of great concerns with which to oppress the weak. The tendency of this law is to protect the weak against the strong, to give the laborer his just and full pay for his day's labor and, by making his punchouts, which he is compelled to accept, between regular pay-days, in order

to live, worth par value, and then he only gets the amount of the original contract for which he agreed to labor instead of scrip and trade, wherever he pleases and exercise the right of a free American citizen. As it has existed, laborers were compelled to trade at the company store or commissary of these concerns and pay long profits and thus labor was unjustly defrauded. This Act justly regulates business, is not arbitrary, its tendency is to promote peace and prevent blood shed and strikes. It is certainly a proper law, at least under the police power of the State. The evils of this kind of business even existed back in the days of William the Fourth, and to remedy this evil the TRUCK ACT was passed and upheld. 17 L. R. A., 395. This evil has grown in this country until many States have passed laws regulating the same. This cause and the cause of the Knoxville Iron Co. vs. Harbison, both pending in this Honorable Court, involve the same question, to-wit: the constitutionality of Acts of the Tennessee Legislature of 1899, Chapter 11, and the Supreme Court of Tennessee, in each of said causes, having held the Act constitutional in able opinions, said opinions are here referred to and made a part of this brief.

See Record in this Cause p. 41. Also Harbinson vs. Knoxville Iron Co., 103 Tenn,, 421.

Every intendment is in favor of the Constitutionality of the Act and the presumption is that the Legislature acted properly.

Munn vs Illinois, 94 U. S., 113.

All contracts and property rights are subject to the police power of the State. Duggar vs. Insurance Co., 95 Tenn., 245; Marr vs. Bank of West Tennessee, 4th Lea, 585; Knoxville vs. Bird, 12 Lea, 121; New York vs. Miln, 11 Peters, 139; Passenger's cases, 7 Howard, 457; Slaughter house cases, 16 Wall, 36-62; Butchers' Union Co. vs. Crescent City Co., 111 U. S., 743; Bowman vs. Railroad, 125 U. S., 465; Lawton vs. Steele, 152 U. S., 136; Reelfoot Lake, etc., vs. Dawson, 97 Tenn., 172, 100 Tenn., 491, 101 Tenn., 567; Cooley's Const. Lim., 5th Ed., 706; Black's Const. Law, Section 154.

The very language of Section 1, of the 14th Amendment to the U. S. Constitution implies that by "due process of law or the law of the land" property rights may be regulated and even taken. 103 Tenn., 421. It is earnestly insisted for the defendant in error that said Act is a good and wholesome law, general in its application and conflicts with no constitutional provision and should be so held by this Honorable Court.

Respectfully submitted,

BENJ. GORDEN McKENZIE,

Attorney for Defendant in Error.

Supreme Court of the United States.

No. 26.—October Term, 1901.

The Dayton Coal and Iron Company, (Limited,) Plaintiff in Error, *vs.* T. A. Barton. } In error to the Supreme Court of the State of Tennessee.

[October 21, 1901.]

This was an action tried in the circuit court of Rhea County, Tennessee, wherein T. A. Barton a citizen of Tennessee, sought to recover from the Dayton Coal and Iron Company (Limited), a corporation organized under the laws of Great Britain, and doing business as a manufacturer of pig iron and coke in said county. The company owns a store, where it sells goods to its employes and other persons. The company also has a monthly pay day, and setttes in cash with its employes on said pay day. In the meantime, and to such of its employes as see fit to request the same, it issues orders on its storekeeper for goods.

On March 17, 1899, the legislature of Tennessee passed an act requiring "all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay laborers and employes for labor or otherwise, to redeem the same in good and lawful money of the United States in the hands of their employes, laborers, or a *bona fide* holder, and to provide a legal remedy for collection of same in favor of said laborers, employes and such *bona fide* holders."

This was a suit brought by said Barton to recover as a *bona fide* holder of certain store orders that had been issued by the defendant company to some of its laborers in payment for labor. The defendant company denied the validity of the legislation, as well under the laws and constitution of Tennessee as the Fourteenth Amendment of the Constitution of the United States. The plaintiff recovered a judgment against the company in the circuit court of Rhea County, and this judgment was affirmed by the Supreme Court of Tennessee, whereupon a writ of error from this court was allowed by the Chief Justice of the State Supreme Court.

Mr. Justice Shiras delivered the opinion of the Court.

The only question presented for our consideration in this record is the validity, under the Fourteenth Amendment of the Constitution of the United States, of the act of the legislature of the State of Tennessee, prescribing that corporations and other persons, issuing store orders in pay-

ment for labor shall redeem them in cash, and providing a legal remedy for *bona fide* holders of such orders.

In the case of *The Knoxville Iron Company* v. *Samuel Harbison*, in error to the Supreme Court of Tennessee, decided at the present term, we affirmed the judgment of that court sustaining the constitutional validity of the State legislation in question, and the cause now before us is sufficiently disposed of by a reference to that case.

The only difference in the cases is, that in the former the plaintiff in error was a domestic corporation of the State of Tennessee, while, in the present, the plaintiff in error is a foreign corporation. If that fact can be considered as a ground for a different conclusion, it would not help the present plaintiff in error, whose right, as a foreign corporation, to carry on business in the State of Tennessee, might be deemed subject to the condition of obeying the regulations prescribed in the legislation of the State. As was said in *Orient Insurance Co.* v. *Daggs*, (172 U. S. 557,) that "which a State may do with corporations of its own creation it may do with foreign corporations admitted into the State. . . . The power of a State to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations, and is fully explained in *Hooper* v. *California*, (155 U. S. 648.)"

We do not care, however, to put our present decision upon the fact that the plaintiff in error is a foreign corporation, nor to be understood to intimate that State legislation, invalid as contrary to the Constitution of the United States, can be imposed as a condition upon the right of such a corporation to do business within the State. (*Home Ins. Co.* v. *Morse*, 20 Wall. 445; *Blake* v. *McClung*, 172 U. S. 239, 254.)

The judgment of the Supreme Court of Tennessee is

Affirmed.

Mr. Justice BREWER and Mr. Justice PECKHAM dissent.

True copy.

Test:

Clerk Supreme Court, U. S.